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Unrelated Comment Submitted by jean publie

Posted by the **U.S. Citizenship and Immigration Services** on Apr 30, 2024

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all immigration shoudl be stopped at all north and south borders and all coastal cities. it is tyime to staunch the overwhelming massive invasion of this count4ry by freebie grabbing foreigners who are getting free phones, free transport, free food, free rent, free medical care, free33 education., all of which american citizens are being bankrupted to pay for. these grifters are invited here by a demented president who is anti american and is trying to destroy america.every action he makes and takes is anti american. this countrty wiull not survive this ugly demented president joe iden., we need to impeach him.

Comment ID

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lv4-95d3-c927

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Apr 17, 2024

PUBLIC SUBMISSION

Comment Submitted by Magnolia Zarraga

Posted by the **U.S. Citizenship and Immigration Services** on Apr 25, 2024

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Thank you for the opportunity to comment on the Draft Supp B; these are my comments/recommendations:
1. Page 2: add space for court case number next to police report number
2. Page 3: List qualifying crimes in 3 columns instead of 2 columns it will allow a bit more space by bringing the info up & reduce the amount of pages
3. Page 4 part 6 & 7 please don't forget to make these fields fillable; also I suggest reducing the writing space in these fields and then using the blank part on the bottom of pg 4 to bring up the next section from pg 5 to reduce unused space and reduce amount of pages.
4. Page 7, items 1-7: I suggest reducing to 5 items to allow more writing space to per item
5. I recommend a further review of Supplement B to keep it as short & simple as possible. Shorter is best b/c a longer Supp B form puts more burden on LEAs which causes more barriers for victims. Victims already face a lot of push back from some LEA's & a longer Supp B form will further exasperate LEA's which will lead to further barriers by victims who already struggle to obtain certifications from certain LEA's.
6. I recommend eliminating the requirement that the certifier seal Supp B. This is not a statutory requirement & it merely creates a further burden on victims & LEA's. It takes additional time for LEA's to make a copy for victim & it is an additional expense to the LEA to provide the additional copy, the expense of the envelope, the expense of the tape and the additional time to seal each Supp B. On a single case the additional expense and time might seem minimal but multiplied it by hundreds per year that time and cost is significant. This is a big ask for LEA's which are already overwhelmed and at capacity with Supp B requests. If USCIS' concern is fraud, there are less burdensome alternatives. For example, a local LEAs initials each page already, USCIS can require this of each LEA. Further USCIS can continue to require

ORIGINAL signatures from LEA's; USCIS also already suggests LEA's keep copy of Supp B for themselves & USCIS can already contact LEA's directly about any concerns, these are all less burdensome alternatives to requiring a sealed supplement B from LEA's. Requiring a sealed Supp B serves as a further barrier for victims because it will further impede victims' access to getting a Supp B from certain LEA's.
7. If, USCIS decides to maintain the new onerous requirement that LEA's seal original Supp B's, please make it a requirement that an LEA give Victim or their representative a copy. Also if USCIS keeps this new requirement to have LEA's seal the Supp B, please make it a policy to RFE for a deficient Supp B and NOT reject or deny an I-918 based solely on a deficient Supp B (for example a missing page or omitted information). This is needed because as advocates we already struggle on a daily basis with doctors & clinics who refuse to provide applicants with a copy of their sealed I-693 despite the instructions for the I-693 specifically stating that applicant is to be given a copy. I can assure you we will likewise struggle with certain LEA's not giving Victims or their representatives a copy of Supp B. This will further strain the relationships between advocates and LEA's. Advocates will be forced to file blindly not knowing what is in the sealed Supp B, not knowing when it was even signed and therefore not being able to calculate the expiration date; we wont be able to address any negative issues on the Supp B or even advocate for our client when an LEA makes a mistake on the Supp B. For all these reasons I strongly urge you to eliminate the new requirement for a sealed Supp B or alternatively make it a requirement that LEA's provide a victim a copy b/c currently it is merely a recommendation on the draft Supp B form/instructions that victims/ representatives be provided a copy.
8. Please address the issue of indirect incapacitated victim due to age more clearly it is mentioned in the instructions but we need more specificity. Currently LEA's are denying U certs where the minor victim is 13 /14/15 or 16 at the time of the Supp B request. This analysis should be left to USCIS yet without specific age given by USCIS LEA's are making their own blanket rules which vary from jurisdiction to jurisdiction. This is creating barriers for victims who are being denied access & creating a situation where US citizen child victims are treated differently than undocumented child victims for example where a 14 year old child is a US citizen, the parent's Supp B is being denied by certain LEA's based solely on that child not being considered incapacitated due to age which deprives the US citizen childs' parent of protection. But if that same 14 yr old child victim s undocumented, they can obtain a Supp B as a primary victim & be able to offer their parent derivative protection.

Comment ID

USCIS-2010-0004-0116

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Comment Details

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Your Voice in Federal Decision Making

PUBLIC SUBMISSION

Comment Submitted by Magnolia Zarraga

Posted by the **U.S. Citizenship and Immigration Services** on Apr 25, 2024

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ID: USCIS-2010-004-0104

Thank you for the opportunity to provide further comment:

Page 11 of the I-918 instructions seem to indicate that affidavits, reports, medical doctor or therapists letters are initial required evidence and not filing them will lead to rejection of the I-918. However many victims do not access medical or psychological treatment for various reasons (financial, fear etc.) Also some victims who do access medical or psychological services whether through nonprofits or private providers are charged exorbitant fees for a simple letter confirming service or summarizing diagnosis & prognosis. For all these reasons this section should be moved from initial required evidence section to the non-exhaustive list of suggested (but not initially required) evidence instead. It is confusing to list it under Initial required evidence when it isn't. Also I recommend to keep it simple on what a letter from a professional should have, most professionals will provide adequate letters and Immigration can chose how much weight to give each letter depending on what it contains, but requiring a curriculum vitae or resume is burdensome on the professional and this can create barriers for Victims to obtain letters from professionals where they might view the requirements as too burdensome.

Pg 3 of the I-918 Supplement B instructions: I would recommend keeping it short and simple, "if it doesn't apply put N/A or none". That is simple enough for certifiers to understand, no further examples are needed but if you list an example the example should relate specifically to the form filled out.

Pg 7 of I-918 Supplement B instructions: remove "see where to file section" it can confuse certifiers and lead them to think they have to file Supplement Bs directly with USCIS, when instead Supp B is to be given directly to the Victim or Advocate to file with the petition.

I-918 draft on pg 2 asks for a copy of passport, but I-918 draft instructions pg 5 , item 14 asks for a copy of EVERY single page of current AND expired passports. Providing a copy of every single page of every passport is not only burdensome but not required. It is only a requirement at the I-485 stage not for the I-918. Please correct or clarify this inconsistency.

Instructions pg 14, part 4 item 6 & 7 have exact duplicate language beginning with "in cases where petitioner is a child...A-D" instead of repeating the exact language on the same page, condense it under its own heading and add a sentence that it is applicable to each subsection. That might help reduce page length and keep it simpler.

Thank you for changing the policy to only require petitioners to sign where derivatives live in a different country, this is a positive change that eliminates a huge burden on petitioners who live in a separate country from their derivative family members.

Comment ID

USCIS-2010-0004-0117

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lvf-1nvu-s5yx

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Received Date

Apr 25, 2024

Give Feedback

January 8, 2024

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Submitted via www.regulations.gov

RE: "Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition For U Nonimmigrant Status"
OMB Control Number 1615-0104; Docket ID USCIS-2010-0004-0087

Dear Ms. Deshommes:

The undersigned organizations dedicated to advocating for immigrant survivors of violence respectfully submit this comment in response to the "Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition For U Nonimmigrant Status," published in the Federal Register on November 9, 2023 for 60 days of public review and comment.[1] We appreciate this opportunity to provide comments.

I. Introduction

The Asian Pacific Institute on Gender-Based Violence (API-GBV), ASISTA Immigration Assistance, the Catholic Legal Immigration Network, Inc. (CLINIC), Freedom Network USA, Her Justice, Inc., Immigration Center for Women and Children (ICWC), National Immigrant Women's Advocacy Project, Inc. (NIWAP), and Tahirih Justice Center are direct services and policy advocacy organizations specializing in assisting immigrant survivors of gender-based violence, including domestic violence, sexual assault, stalking, human trafficking, forced labor, forced marriage, female genital mutilation/cutting and other crimes.

API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence impacting Asian, Asian American, Pacific Islander ("AAPI") and immigrant communities. API-GBV supports a national network of advocates and community-based service and advocacy organizations working with AAPI and immigrant and refugee survivors, and provides analysis and consultation on critical issues facing AAPI and immigrant and refugee survivors of gender-based violence, such as implementation of legal protections afforded immigrant and refugee survivors in the Violence Against Women Act, the Trafficking Victims Protection Act, and the Personal Responsibility and Work Opportunity Reconciliation Act, Title VI of the Civil Rights Act of 1964, and other federal laws. API-GBV

[1] Agency Information Collection: Petition For U Nonimmigrant Status, 88 FR 77347 (Nov.9, 2023), https://www.federalregister.gov/documents/2023/11/09/2023-24772/agency-information-collection-activities-revision-of-a-currently-approved-collection-petition-for-u?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

engages in training, technical assistance, and leads by promoting culturally relevant intervention and prevention, expert consultation, technical assistance and training; conducting and disseminating critical research; and informing public policy.

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence.. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes that were created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA). We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors and submit this comment based on our guiding principles and our extensive experience.

Embracing the Gospel value of welcoming the stranger, **CLINIC** has promoted the dignity and protected the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs since its founding in 1988. CLINIC's network, originally comprised of 17 programs, has now increased to more than 450 diocesan and community-based programs in 48 states and the District of Columbia. CLINIC is the largest nationwide network of nonprofit immigration programs. Through its Affiliates, CLINIC advocates for the just and humane treatment of noncitizens.

Freedom Network USA (FNUSA) is the nation's largest coalition of service providers, survivors, and advocates working directly with human trafficking survivors. FNUSA is committed to a human rights-based approach to human trafficking, placing a trafficked person's priorities and narrative at the center of anti-trafficking work. Over 100 FNUSA members work to create a coordinated national system in which appropriate and effective high-quality services are available to any survivor, anywhere, anytime—regardless of legal status, geographic location, age, gender, sexual orientation, or type of trafficking experienced.

Her Justice is a non-profit organization that, since its founding in 1993, has been dedicated to standing with women living in poverty in New York City by recruiting and mentoring volunteer lawyers to provide free legal help to address individual and systemic legal barriers. Our immigration program works directly with undocumented immigrants to provide a path to lawful immigration status. We work primarily with survivors of domestic and sexual violence, those affected by human trafficking and/or children who have suffered abuse, abandonment or neglect. We represent in-house clients and mentor pro bono attorneys in their representation of clients for VAWA Self-Petitions, Petitions for U Nonimmigrant Status, Applications to Adjust Status, Waivers of the Joint Petition to Remove Conditions on Residence, Applications for Naturalization, Applications for T Nonimmigrant Status, and Applications for Employment Authorization. Along with our efforts to provide legal services to individuals, we engage in policy reform and advocacy to reform the immigration system so that the greatest number of immigrant women are able to obtain and preserve the best possible status, through a process that prioritizes their safety and dignity.

ICWC is a non-profit legal organization providing free and affordable immigration services to underrepresented immigrants in California and Nevada. ICWC strives to provide security and

stability for children who are abused, abandoned or neglected and for immigrants who are survivors of domestic violence, sexual assault and other violent crimes. Since its founding in 2004, ICWC has developed national expertise in humanitarian-based immigration cases assisting survivors of trauma and has served over 45,000 people.

NIWAP is a training, technical assistance, and public policy advocacy organization with almost four decades of experience developing, reforming and promoting the implementation and use of laws and policies to improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, human trafficking, and other crimes. NIWAP's Director was involved in drafting the Trafficking Victims Protection Acts of 2000 and 2008. NIWAP provides direct technical assistance and training materials for attorneys, advocates, state court judges, immigration judges, the Board of Immigration Appeals, police, sheriffs, prosecutors, Department of Homeland Security, and other professionals.

The **Tahirih Justice Center** is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant survivors of gender-based violence. In five cities across the country, Tahirih offers legal and social services to immigrants fleeing all forms of gender-based violence, including human trafficking, forced labor, forced marriage, domestic violence, rape and sexual assault, and female genital mutilation/cutting ("FGM/C"). Since its beginning in 1997, Tahirih has provided free legal assistance to more than 32,000 individuals, many of whom have experienced the significant and ongoing psychological and neurobiological effects of trauma. Through direct legal and social services, policy advocacy, and training and education, Tahirih promotes a world where immigrant survivors can live in safety and with dignity.

We thank USCIS for making revisions to the forms that reflect greater gender inclusivity and provide additional guidance to law enforcement certifiers and *pro se* applicants. Our recommendations will address the proposed revisions to the form I-918/I-918A, and I-918B, respectively. We believe some of these changes will protect noncitizen survivors of crime and gender based violence by increasing their access to lawful immigration status, independence, and physical safety. We also believe that some of the revisions will cause additional burdens on applicants and certifiers and frustrate the aims of the VAWA statute and U visa, as detailed in this comment. We urge USCIS to consider our recommendations in adopting further changes to the I-918 U Nonimmigrant Petition forms.

As an initial matter, we recommend that the federal government adopt a more transparent process for seeking comments on proposed immigration form revisions, especially those related to humanitarian relief. Many immigrant survivors of violence, along with busy practitioners who represent them in these applications, are unaccustomed to navigating the federal register site to locate the most up to date revisions published for comment. In the current collection, the proposed revisions are located in a sidebar on the lower right section of the webpage labeled "enhanced content," showing 10 documents related to the current information collection. Among those documents are links labeled "i-918supa," leading to a post from March 24, 2023, and "Form I-918 Supplement A, Petition for Qualifying Family Members of U-1 Recipient," leading to a document posted on September 18, 2020. Persons who click the link reading "see all 69 supporting documents" are then brought to a page listing all form revisions

proposed under the docket USCIS-2010-0004 in random order, requiring users to further winnow down the selection by date to see the current revisions. This way of presenting the proposed revisions is inadequate for the purpose of gathering responses from affected persons. **We recommend that the federal register website provide clear and user-friendly instructions for locating the relevant immigration form revisions produced for review in each agency information collection.**

Moreover, where revisions include both changes of format and changes to content, both are indicated in red, making the type of change more difficult to identify. **We recommend using a different color for purely formatting changes (such as the transition from two columns of questions to one column or full page formatting) so that users can more quickly and efficiently participate in the process of review and comment.**

Finally, we recommend that USCIS provide reasoning for significant changes to forms produced for comment, to avoid uncertainty over how additional information collected by the forms will be used. One of the forms included in this collection, the I-918B, contains extensive content changes to both the form and instructions, on which practitioners, immigrant survivors, and other members of the public including potential law enforcement certifiers heavily rely. These changes will likely impact certifier policies and relationships between certifiers, service providers, and immigrant survivors themselves, that are crucial to implementation of the U visa program. We respond to the specific proposed changes below, but recommend that USCIS provide reasoning for changes that significantly impact the access of immigrant survivors to U visa status.

II. Comments and Recommendations Related to Forms I-918/I-918A

A. Part 1, Question 9 (I-918)/Part 3, Question 7 (I-918A):

We applaud USCIS for the proposed addition of a gender inclusive identification option to Forms I-918 and I-918A. In 2021, ASISTA recommended this change in furtherance of the April 10, 2012, U.S. Citizenship and Immigration Services issued Policy Memorandum, "Adjudication of Immigration Benefits for Transgender Individuals; Addition of Adjudicator's Field Manual (AFM) Subchapter 10.22 and Revisions to AFM Subchapter 21.3 (AFM Update AD12-02)," and January 19, 2017 USCIS Policy Memorandum, "Revision of Adjudicator's Field Manual Subchapter 10.22 - Change of Gender Designation on Documents Issued by U.S. Citizenship and Immigration Services." We commend USCIS for recognizing, through this proposed addition, the value of accurate gender documentation to immigrant survivors.

B. Part 4, Victim's Personal Statement (I-918):

We do not oppose the addition of space for a victim's personal statement in the Form I-918, but **recommend the addition of language in the form and instructions warning immigrant survivors against the use of representatives who are not either licensed attorneys or DOJ-accredited representatives to apply for U nonimmigrant status.**

We appreciate the increased accessibility to *pro se* petitioners that the additional space for the required victim statement represents. Many legal providers report challenges meeting capacity for the large numbers of U visa eligible noncitizen survivors in need of service. However, the analysis required for identifying and waiving grounds of inadmissibility to admission in U nonimmigrant status is complex, and in many cases requires thoughtful preparation by competent counsel. Failure to correctly identify inadmissibility grounds may result in incomplete waivers, which can create difficulties for U visa beneficiaries at the time of adjustment of status or naturalization.

To better address the capacity problems faced by immigration legal providers, particularly in rural areas, USCIS should continue its efforts to process U visa petitions more rapidly. The bona fide determination (BFD) represents a positive innovation that benefits immigrant survivors and allows for service providers to expand their services to accept more and complex cases featuring difficult questions of inadmissibility. Without competent representation, otherwise eligible immigrant survivors could be denied relief or experience a traumatic loss of status at later points in their immigration journeys.

For these reasons, **we recommend that USCIS include language in the Form I-918 instructions advising *pro se* petitioners to avoid working with unlicensed or unaccredited legal representatives, particularly if they answer yes to any of the inadmissibility questions contained in Part 2.**

C. Part 2 (I-918); Part 5 (I-918A), Chart of Entries and Exits Since April 1, 1997:

We agree that it could be helpful to identify entry-related inadmissibilities at the time of the initial U and U derivative visa petitions, but caution USCIS against using incorrect information, especially reported by *pro se* applicants, to allege misrepresentation or deny otherwise eligible petitions. Depending on their experiences before and after entries, immigrant survivors may have experienced trauma that impacts their memories of prior events, including entries.[2]

Whenever possible, USCIS should rely on records accessed by biometrics information to assess a U petitioner's inadmissibility, and not reflexively conclude that conflicting information provided by a petitioner is due to lack of credibility or suggests an intention to defraud the immigration system.

D. Part 2, Question 28 (I-918); Part 5, Question 28 (I-918A): Have you EVER falsely claimed to be a U.S. citizen (in writing or in any other way)?:

We agree that it could be helpful to identify the false claim to US citizenship ground of inadmissibility at the time of the initial U visa petition, but again, caution USCIS against using

[2] *See, e.g.,* RoseMarie Perez Foster, Ph.D., *When Immigration Is Trauma: Guidelines for the Individual and Family Clinician*, American Journal of Orthopsychiatry, 71(2), April 2001, https://www.sjsu.edu/people/edward.cohen/courses/c3/s1/immigration_trauma.pdf (discussing the different phases of migration and associated trauma); Saadi A, Hampton K, de Assis MV, Mishori R, Habbach H, Haar RJ, *Associations between memory loss and trauma in US asylum seekers: A retrospective review of medico-legal affidavits*, PLoS ONE 16(3): e0247033 (2021), https://doi.org/10.1371/journal.pone.0247033.

incorrect information, especially reported by *pro se* applicants, to allege misrepresentation or deny otherwise eligible petitions. **USCIS should recognize that this question, along with many other questions triggering inadmissibility in Part 2, involve legal conclusions and can be easily misunderstood by *pro se* applicants.**

Similarly, we urge USCIS to eliminate questions that require legal conclusions from petitioners related to culpability for criminal offenses and uncharged conduct.

III. Comments and Recommendations Related to Form I-918B Form and Instructions:

Without a signed Form I-918B certification of helpfulness, an immigrant survivor of crime simply cannot apply for a U visa. Because the immigration law leaves certification to the discretion of law enforcement agencies (LEAs), advocates for immigrant survivors have spent more than a decade developing relationships with certifiers and collaborating with them to develop certification policies. Advocates have also worked to pass legislation in several states setting protocols for certification by state LEAs.[3] These efforts have yielded both great success in expanding the willingness of LEAs to provide certifications to immigrant survivors, and helpful information about barriers to certification. Nevertheless, misinformation or ignorance about the U visa program and certification processes persist, as does the need for trauma-informed and accessible engagement with immigrant survivors by law enforcement actors.[4]

For these reasons, we oppose several of the additions to the Form I-918B and accompanying instructions, on the grounds that they add unnecessary bulk and inefficiency to the form and certifying process, fail to address long-standing barriers to certification by LEAs, and invite the certifying agency to provide negative and extraneous information that may cause further injury to immigrant survivors. Moreover, we recommend that changes to the Form I-918 include instructions about language access and trauma-informed approaches to working with immigrant victims, along with more prominent prohibitions on disclosure.

A. The expanded length of the I-918B form and instructions are counter to the goals of the U visa program and may introduce further confusion and inefficiency to the certification process:

The proposed revisions to the form I-918B lengthens the form by two pages, and includes more space for certifiers to provide written answers about the immigrant survivor's culpability for the crime of which they are a victim, their injury, degree of helpfulness, and unspecified negative information about the victim. These expanded questions provide certifiers a larger role in determining the petitioner's eligibility and deservingness for the U visa, which exceeds the scope of their role in the U visa program. We discuss further the negative impact of these additional questions below, but note here that the expansion of the form is not conducive to participation in the U visa program by reluctant LEAs.

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[3] Catholic Legal Immigration Network (CLINIC), *States with U Certification Laws as of January 1, 2022*, https://www.cliniclegal.org/sites/default/files/2022-04/States%20With%20U%20Visa%20Certification%20Laws%20As%20Of%202022.01.01.pdf.

[4] Yilun Cheng, *When It's Up to the Cops if You Get Your Visa: U visas were created to help immigrants report crimes, but the cops often don't uphold their end of the bargain*, Slate (April 14, 2021), https://slate.com/news-and-politics/2021/04/u-visas-immigration-cop-conflict.html.

The proposed revision to the instructions is lengthened by three pages and includes added language mostly drawn from the DHS U Visa Law Enforcement Certification Guide. The proposed revision also includes links to the DHS U Visa Law Enforcement Certification Guide on pages 1 and 2 although, curiously, not to the instruction on page 5 for providing information about designated officials to USCIS. We applaud DHS for updating the U Visa Law Enforcement Certification Guide in 2022, but suggest that adding duplicative information to the Form I-918B instructions is inefficient and potentially confusing to certifiers. Certifiers, especially those unfamiliar or uncomfortable with the U visa program, may become easily overwhelmed and even exasperated or repelled by lengthy forms and instructions and multiple versions of similar guidance. As advocates have developed guidance for certifiers as well, there is simply no need for USCIS to expand on its existing and more streamlined instructions to include repetitive information.

We recommend that USCIS revise the Form I-918B instructions to refer LEAs to the DHS Visa Law Enforcement Certification Guide for background information about the U visa program, definitions of victim, best practices for submitting the certification, and instructions for withdrawing support for the victim's U visa petition after the certification has been submitted. This approach would be more consistent with the Paperwork Reduction Act of 1995 as well as the more recent Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government directing agencies to reduce paperwork burdens and administrative hurdles.[5] By incorporating by reference and using the link in the form and form instructions, USCIS can facilitate consultation of the *full* DHS U Visa Law Enforcement Certification Guide by certifiers with questions about how to participate in the U Visa program.

Further, if USCIS wishes for certifiers to submit their information to a central database, it should include this short instruction (or one with similar wording) from the U Visa Law Enforcement Certification Guide directly to the Form I-918B, Part 2, Question 4: "For U visas, you can [update] USCIS when your certifying agency adds or removes a certifying official by emailing a copy of a signed letter from the head of your agency delegating certifying authority to LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov."

B. Additional questions to certifiers fail to address long standing barriers and exacerbate anti-immigrant bias:

Advocates for immigrant survivors have long worked with LEAs to encourage their participation in the U visa program and develop policies that support immigrant victims to step forward out of the shadows to report crimes against them. Rather than addressing LEA concerns about certifying helpfulness, the additional questions and explanation fields in the proposed new form I-918B will more likely lead LEAs further astray as to the limited scope of their role in the U

[5] Executive Order on Transforming Federal Customer Service Experience and Delivery to Rebuild Trust in Government (Dec. 13, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/

visa program, cause confusion, and impede efforts by advocates for immigrant survivors to maximize the benefits of the U visa program.

Advocates have found the greatest barriers to certification to be anti-immigrant animus, failure to understand the kind of qualifying criminal activity that may form the basis of a U visa petition, and inability of the immigrant survivor to communicate in their primary language to the LEA[6] – none of which are ameliorated by the revised I-918B. In 2013, the National Immigrant Women's Advocacy Project (NIWAP) conducted a national survey of service providers to identify trends in police responses to immigrant crime victims.[7] NIWAP's survey discovered that the majority of "reasons for not signing certifications seem to reflect misunderstandings and misperceptions certifying agencies have about legal parameters and requirements about the U Visa and the certification process."[8] Reasons for declining to issue a certification included that the perpetrator was not prosecuted or identified, the crime happened long ago, the victim did not suffer injuries, and that the victim was unhelpful.[9] As to helpfulness, the NIWAP study posits inadequate language access as a significant barrier to communication between immigrant victims and LEAs, and further notes that assistance with the *detection* of a qualifying crime should be sufficient to meet the helpfulness requirement.

In 2017, the New York City Department of Investigation (DOI) and Office of Inspector General for the New York Police Department (OIG-NYPD) audited the NYPD's U visa certification activity and found that reasons given for declining to issue a U visa certification were primarily that the underlying offense was not a qualifying crime, there was insufficient information from which to determine the qualifying crime, and that the victim was not helpful.[10] Upon review of the denials, DOI and OIG-NYPD recommended that NYPD adopt a more trauma-informed approach to determining helpfulness and consider abuse-related reasons why a victim might become less responsive over the course of an investigation.

None of the additional questions or instructions added to the proposed I-918B and instructions address language access or trauma-related reasons for limited communication with certifiers. The only mention of abuse in either the form or instructions is a note on page 2 of the instructions reminding certifiers that victims of domestic violence may be accused of domestic violence by their abusers. Given the expansion of the questions pertaining to helpfulness in Part 6 of the proposed I-918B revision, we are disappointed not to see guidance related to language access or domestic violence and trauma on the form or in the related

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[6] *Supra* n. 4, describing the experiences of practitioners seeking U visa certifications in various counties in Illinois.
[7] National Immigrant Women's Advocacy Project (NIWAP), *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access* (Apr. 26, 2013), https://www.masslegalservices.org/system/files/library/Police%20Response%20U%20Visas%20Language%20Access%20Report%20NIWAP%20%204%2016%2013%20FINAL.pdf.
[8] *Id*., pp. 13-14.
[9] *Id*.
[10] New York City Department of Investigation's Office of Inspector General for the NYPD, *When Undocumented Immigrants Are Crime Victims: An Assessment of NYPD's Handling of U Visa Certification Requests* (July 2017), https://www.nyc.gov/assets/doi/reports/pdf/2017/07-28-2017-U-Visa-Rpt-Release.pdf. 16% of the sample of denials evaluated by the OIG-NYPD were because of the victim's own criminal background. Upon review, the agency found that a portion of those denials pertained to victims with minor criminal histories who were not a threat to public safety.

instructions. **Rather than adding duplicative questions about helpfulness, we recommend adding a note directly to the form advising certifiers of the following:**

> **When determining whether the victim was helpful, please take into account the victim's ability to communicate with the certifier agency in their primary language at any point in the detection, investigation, or prosecution of the qualifying criminal activity and if domestic violence or the experience of trauma may have inhibited their participation. Note that assistance with the detection, investigation, or prosecution of an offense make certification appropriate at any point in time.**

C. <u>Soliciting negative information about victims from certifiers is harmful to immigrant survivors and frustrates the goals of the U visa program</u>:

Part 8 of the proposed I-918B provision invites a certifier to provide "supplemental information" that may be relevant to USCIS adjudication, "(for example, related to arrest and criminal history.)" **We oppose the addition of this field as unnecessary and injurious to petitioners.** While the decision to issue a certification is statutorily left to the discretion of an LEA, advocates have long sought to educate certifiers that the U visa is ultimately decided by USCIS, that USCIS will necessarily conduct a searching review of the petitioner's criminal history and grounds of inadmissibility before approving or denying a U visa petition, and that the role of the certifier is a limited part of the process.[11] While criminal histories may be a reason for some LEAs to decline certification, adding this question is not a victim centered method of encouraging certification.[12] Instead, USCIS should continue to support efforts by advocates, and collaborations of advocates and law enforcement agencies, to educate certifiers about the U visa program.

Moreover, we continue to oppose the use by USCIS of uncorroborated allegations to deny otherwise eligible petitioners relief on discretionary grounds. Such information, as contained in police reports for example, are excluded from federal criminal proceedings as unreliable hearsay evidence, and are not considered part of the record of conviction that can be reviewed to determine the scope of culpability and collateral consequences of a particular offense.[13] Continued reliance on one-sided and unvetted police reports/complaints for the truth of their

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[11] *See, e.g.*, NIWAP, *U Visa Certification Toolkit and T Visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors* (August 30, 2021), https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/U-T-Visa-Toolkit_Law-Enforcement-Prosecutor-6.15.21.pdf; CLINIC, *Guide for Law Enforcement: How to Respond to A U Visa Certification Request*, https://www.cliniclegal.org/sites/default/files/2022-04/U%20Visa%20Certification%20Guide%20for%20Law%20Enforcement.pdf.

[12] *Supra* n. 10. Moreover, the NYC DOI and OIG-NYPD advised the NYPD, one of the largest certifying agencies in the United States, that its internal rule against providing certifications to victims with criminal histories was overbroad.

[13] *See* Mary Holper, *Confronting Cops in Immigration Court*, 23 Wm & Mary Bill Rts. J. 675, 685-6 (May 2, 2015) (describing the Senate report explaining the exclusion of police reports from the hearsay exception for public records), *Shepard v. United States*, 544 U.S. 13 (2005). *Cf.*, *Dickson v. Ashcroft*, 346 F.3d 44, 53-54 (2d Cir. 2003) (excluding the pre-sentence report prepared by the probation office from consideration as part of the record of conviction for determining removability due to its one-sided nature). *See also Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995), (noting that the BIA was "hesitant to give substantial weight to an arrest report, absent a conviction [of the alleged crimes] or corroborating evidence of the allegations contained therein.").

assertions to deny U visas to immigrant survivors of violence is out of step with the prevailing treatment of this evidence across adjudication systems. Where the goal of an adjudicator is to determine facts based on reliable evidence, uncorroborated police complaints have no place. As this question solicits police reports or other unreviewed statements about a petitioner's character or past actions, it should be eliminated.

When enacting the U visa program in the Victims of Trafficking and Violence Protection Act in 2000, Congress sought to "encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against [them]."[14] A twin goal of the creation of the U visa program was to "[offer] protection to victims of such offenses in keeping with the humanitarian interests of the United States."[15] **We urge USCIS to consider that better service to immigrant crime victims includes understanding that they may have past contacts with the criminal legal system growing out of trauma, poverty, discrimination, coercion, or simply as a result of mistakes, and not to deny the transformative relief of U visa status to immigrant survivors who have already experienced the harm of system-based violence based on unreliable evidence provided by law enforcement.**

D. Provision on disclosure of information should be added to the Form I-918B:

The proposed revision also includes on Page 8 of the instructions a prohibition on disclosure of information under 8 U.S.C. § 1367 and 8 C.F.R. 214.14(c) to anyone other than an official of DHS, DOJ, or DOS. **We applaud the inclusion of this language in the instructions, but recommend instead that it be inserted directly onto the form just above the signature line of the certification**, to better alert certifiers of these special protections for immigrant survivors**.**

IV. Conclusion

We appreciate the efforts of USCIS and DHS to improve the U visa program and make it easier for affected communities and community partners to participate. Thank you for your consideration of these comments. Please address any questions you may have about our recommendations to cristina@asistahelp.org.

Respectfully submitted,

Asian Pacific Institute on Gender Based Violence (API-GBV)
ASISTA Immigration Assistance
Catholic Legal Immigration Network, Inc. (CLINIC)
Freedom Network USA
Her Justice, Inc.
Immigration Center for Women and Children (ICWC)
Tahirih Justice Center
National Immigrant Women's Advocacy Project, Inc. (NIWAP)

[14] (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464-1548, 1533-34 (2000).
[15] *Id*.

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January 8, 2024

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, USCIS– 2010–0004; OMB Control Number 1615-0104.

Dear Chief Deshommes,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security's (DHS) Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, published on November 9, 2023.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC is also a leader in interpreting family-based immigration law as well as VAWA, U, and T immigration relief for survivors, producing trusted legal resources including webinars, trainings, and manuals such as *Families & Immigration: A Practical Guide*; *The VAWA Manual: Immigration Relief for Abused Immigrants*; *The U Visa: Obtaining Status for Immigrant Survivors of Crime*; and *T Visas: A Critical Option for Survivors of Human Trafficking*. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by vulnerable immigrant and low-income communities – including survivors of intimate partner violence, sexual violence, human trafficking, or other forms of trauma. We welcome the opportunity to provide comments on Form I-918 Petition for U Nonimmigrant Status and related forms.

I. The ILRC commends the agency for positive changes made to the U visa forms.

a. Shorter Length for Form I-918 and Form I-918A

The ILRC commends USCIS for reducing the length of both Form I-918 and Form I-918 Supplement A ("Form I-918A"). Shorter forms are more user-friendly, particularly for pro se applicants, and more efficient for the agency.[1]

b. Streamlining Form Sections

We also appreciate the measures the agency has taken to streamline the form, which makes the form less intimidating and easier to access for survivors of trauma. These changes include:

- Streamlining the address sections by combining the foreign and domestic address sections on both Form I-918 and Form I-918A;
- The addition of Questions 14 and 15 in Part 1, Information about You, on Form I-918 and Questions 12 and 13 in Part 1, Information about your Qualifying Family Member, on Form I-918A, which provide options, and may reduce confusion, for applicants who may not have a passport or I-94;
- The addition of a chart for arrivals and departures from the United States, which takes up less space and makes it easier for applicants to accurately provide information for multiple entries;
- The addition of "if applicable" for an applicant's middle name, which will reduce issues that may result from blank entries on the form;
- The removal of the requirement for mailing addresses for interpreters and preparers;
- The removal of the unnecessary question about having received voluntary departure;
- Combining questions about uncommon grounds of inadmissibility, such as combining whether the applicant intends to engage in prostitution, gambling, bootlegging, or child pornography and combining hijacking, sabotage, and assassination;
- The removal of questions regarding membership in a Community Party or Nazi Party;
- The removal of questions regarding uncommon grounds of inadmissibility such as J-1 visas, 274C final orders and civil penalties, avoiding draft, communicable disease, polygamy, stowaway, use of biologic agent, aiding terrorism, etc.;
- The addition of Questions 2 and 3 in Part 1, Family Member's Relationship To You, on Form I-918A which will allow for easier triage and matching files between derivative petitions and principal petitions that have already been filed;
- The removal of unnecessary questions about spouse and children from Form I-918A; and
- The removal of questions regarding having a physical or mental disorder and behavior from Form I-918A;
- The removal of questions regarding being a drug abuser or drug addict from Form I-918A;
- Changing the order of the first questions on Form I-918B so that the applicant's name is first and not their A#, which is a more user-friendly order for certifiers;
- Changing the language in new Question 3 in Part 4 on Form I-918B to check the category under which the qualifying criminal activity "appears" to fall;
- Adding new Question 4 in Part 4 on Form I-918B that gives agencies the space to explain how the criminal activity is similar to the categories noted in the list of qualifying crimes, with the example of felonious assault given; and
- The addition of language clarifying that USCIS (not the certifying agency) is solely responsible for determining whether the crime is a "qualifying criminal activity" for purposes of U eligibility on Form I-918B.

[1] We note that this change is in line with President Biden's Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, and we urge the agency to continue to assess immigration benefit forms with this customer experience and service lens.

c. Gender Inclusive Options and Language

We applaud the agency for its use of gender inclusive options on Form I-918 and Forms I-918A and I-918B. We have commended USCIS for this change on other forms revisions and reiterate our thanks here. Having the option of "Another Gender Identity" is inclusive for all applicants and we urge the agency to make this change to all immigration benefit forms. Relatedly, we applaud the gender-neutral use of "qualifying family member" as opposed to "he or she."

d. Safe Address Guidance

We are also appreciative of the safe address guidance on the form itself. This change brings the form in line with the USCIS Policy Manual for which updated guidance was published in April 2023.[2] However, we urge USCIS to go further and provide this information on all forms where survivors of crime may need to protect their addresses (e.g. Form I-485, Application to Register Permanent Residence or Adjust Status).

II. The ILRC Requests USCIS to Make Further Changes to Form I-918 and Form I-918A to Reduce Barriers to U Nonimmigrant Status

While we are appreciative of the positive changes made to Form I-918 and Form I-918A mentioned above, we offer the following suggestions to aid the agency in its effort to streamline the form and to make the process easier for applicants and adjudicators alike.

a. USCIS should remove questions that ask applicants to draw legal conclusions.

Question 8 in Part 2 of Form I-918 and Form I-918A should be eliminated entirely, and the agency should revise the introduction language under the heading "Criminal Acts and Violations" such that applicants are not required to draw legal conclusions. By asking applicants if they have committed a crime for which they were not "arrested, cited, charged with, tried for that crime, or convicted," this question asks applicants to understand the local, state, and federal penal codes everywhere they have lived and to draw a legal conclusion that their actions rise to the level of criminality. USCIS should also clarify in this section that traffic citations do not need to be included. Over-broad questions run the risk that erroneous or incorrect information will be submitted necessitating Requests for Evidence (RFEs) that slow down adjudication. Given the broad nature of Question 8, there is also a risk that relevant information will be omitted unintentionally, which could lead to a finding of fraud during an adjudication or even later at adjustment or naturalization. Questions like this disadvantage pro se applicants in particular, as they require legal expertise.

b. USCIS should amend the forms to ensure that juvenile records are not included in eligibility inquiries.

USCIS should cease the consideration of juvenile records in applications for U nonimmigrant status. To that end, USCIS should make clear on Form I-918, Form I-918A, and all instructions that juvenile arrests, charges, and dispositions need not be disclosed, and juvenile records need not be provided. Across the United States, juvenile justice systems – civil systems that adjudicate violations of the law by children – recognize the significant developmental differences between children and adults and accordingly focus on early intervention, community-based resources, and rehabilitative efforts rather than punishment. In fact, most juvenile justice systems, including the federal system, have confidentiality provisions to protect young people from collateral consequences of juvenile court involvement that can occur when information and records from juvenile court proceedings are publicly available. Requiring people to disclose their youthful violations of the law to USCIS is at odds with the law and policy undergirding juvenile justice systems.

[2] https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-guidance-on-safe-mailing-address-and-case-handling-procedures-for-certain.

Further, immigration law does not support consideration of juvenile justice records as a matter of discretion in immigration adjudications. The seminal case on the exercise of discretion in immigration adjudications remains *Matter of Marin*. In *Matter of Marin*, the BIA lists several factors that could be deemed adverse for purposes of discretionary determinations: "the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country."[3] Juvenile delinquency adjudications do not fit anywhere within this rubric. First, juvenile justice systems are civil in nature and accordingly state laws forbid the consideration of juvenile delinquency adjudications as "crimes" or youth adjudicated delinquent as "criminals." Second, evidence of a juvenile record simply is not evidence of "bad character." Even the Supreme Court has recognized that youthful violations of the law may not be indicative of adult character and behavior.[4] In recognition of the distinctions between criminal and juvenile proceedings, the BIA held that juvenile adjudications are not treated as convictions for purposes of immigration law. This differential treatment must be extended to the exercise of discretion, especially considering that delinquency does not appropriately fit into the existing legal framework for discretionary determinations.

To better align USCIS policy with both state laws and immigration laws, the language in the proposed Form I-918, Form I-918A, and related instructions should be amended to affirmatively exclude juvenile arrests, charges, and adjudications. Specifically, the introduction language to Part 2 "Criminal Acts and Violations" should be altered in the following way:

> *For* ***Item Numbers 7.-31. [7-29. for I-918A],*** *you must answer "Yes" to any question that applies to you, even if your records were sealed or otherwise cleared, or even if anyone, including a judge, law enforcement officer, or attorney told you that you no longer have a record. You must also answer "Yes" to the following questions whether the action or offense occurred in the United States or anywhere else in the world. However, do not include offenses that were handled in a juvenile court system.*

c. USCIS should reduce the expanded questions about unlawful presence and immigration violations.

The proposed Forms I-918 and I-918A ask more questions in general about entries and exits. While it is important to help applicants flag potential immigration issues for which they should seek a waiver, some of the added questions are unnecessary and redundant. For example, the new Question 5 in Part 2 asks if the applicant has ever departed the United States after having been ordered excluded, deported, or removed. However, Question 4 asks whether the applicant has been issued a final order; Question 3 asks for removal proceedings with date of action; and the section begins by asking for a list of all entries and departures. Thus, Question 5 is unnecessary and redundant.

Similarly, the new Question 6 in Part 2 asks specifically whether the applicant has entered the United States without being inspected and admitted or paroled. However, on the same page, applicants are required to fill out a chart with all entries and manners of entries. Thus, this question is entirely repetitive and should be removed.

Moreover, the current question regarding whether someone has been denied a visa or denied admission to the United States has been split into two questions. Given how rare it is for U visa petitioners to be denied a visa prior to applying for U nonimmigrant status and the potential difficulty of parsing the difference between these two types of denials for pro se petitioners, we recommend re-combining these questions to streamline the application.

The new Question 3 regarding the type of immigration proceedings the petitioner was in should include an "unknown" option. This option is critical for petitioners, particularly those who are unrepresented, who may not know what type of proceedings were brought against them. The new Question 4 and Question 5 should also include a similar "unknown" option for petitioners who may not know that they had an expedited removal order or a

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[3] 16 I&N Dec. 581, 584 (BIA 1978).

[4] *See Roper v. Simmons* 543 U.S. 551, 570 (2005).

removal order in absentia. Here, too, such an option is important to make sure that petitioners with incomplete information can answer the question to the best of their ability without incurring suspicions of fraud. Moreover, USCIS should rely on its own agency records to determine a U petitioner's immigration history and not assume that conflicting information provided by a petitioner is willful or fraudulent.

In addition, the new Question 26 in Part 2 is redundant and overbroad. It asks whether the petitioner has ever submitted fraudulent or counterfeit documentation to any U.S. government official. If this question is trying to solicit information about the document fraud inadmissibility ground at INA § 212(a)(6)(F), it is overbroad as that ground requires the person to be the subject of a final order for a violation of INA § 274C. See current Form I-918 Part 3 Question 22 ("Are you now under a final order or civil penalty for violating section 274C of the INA (producing and/or using false documentation to unlawfully satisfy a requirement of the INA)?"). If this new question is instead trying to solicit information about fraud more generally, it is unnecessary, as the following new Question 27 asks whether the petitioner has ever "lied about, concealed, or misrepresented any information." New Question 26 should thus be eliminated.

The new Question 28 asks if the petitioner has ever claimed to be a U.S. citizen in writing or any other way. The inadmissibility ground at INA § 212(a)(6)(C)(ii) requires that the false claim be made for a purpose or benefit under the INA or any other federal or state law. We agree that this new question could help identify the false claim to U.S. citizenship ground of inadmissibility at the time of the initial U visa petition, but note that the current wording is overbroad and could lead to confusion for petitioners and misreporting. We also urge USCIS not to use incorrect information on the questions in this section, particularly from pro se applicants, to assume fraudulent intent or deny otherwise eligible petitions.

III. ILRC Requests USCIS Make Changes to Form I-198B

The proposed Form I-918B is two pages longer than the current form and contains more narrative portions for the certifier to complete. The expanded length and more onerous questions will increase the amount of time certifiers need to complete the form, which in turn will delay and impede the certification process. This added inefficiency will create further barriers for immigrant survivors of crime to access U nonimmigrant status, particularly unrepresented petitioners. We offer the following suggestions to aid USCIS in its effort to streamline Form I-918B and to make the certification process easier for both applicants and the certifying agencies.

a. Reduce the expanded questions and space devoted to questions around culpability of the victim.

Proposed Form I-918B expands the questions about potential culpability of the victim. This expansion in and of itself gives undue attention to the rare situations where a victim is culpable for the crime committed against them. Moreover, Questions 5 and 6 in Part 4 around potential culpability in the qualifying criminal activity solicits information, without guidelines, from certifiers to make a determination of culpability even where a record does not exist. Specifically, Question 5 allows for the certifying agency to explain "why [they] feel the victim may be or is culpable." The breadth of this question, without qualification, may cause issues for applicants because it allows for an agency official who might not have the proper training to assign culpability where there may be none or not to recognize situations that arise from being the victim of a crime. We appreciate the instructions note that oftentimes a perpetrator will accuse the victim of a crime, as part of the power and control asserted by the abuser in domestic violence cases, for example; nevertheless, the addition of this question on Form I-918B may unnecessarily solicit subjective and unfounded allegations of culpability or backstories about the crime. The response to this question will depend on the certifying agencies' training in domestic violence dynamics in addition to how well the applicant can communicate with the certifying agency to whom the crime was reported. There are oftentimes language barriers between the certifying agency who created the report and the U petitioner. The agency should thus reduce the expanded questions about culpability.

b. Streamline the questions related to "helpfulness of victim" and remove duplicate questions around helpfulness.

The agency should revise Form I-918B so that certifying agencies do not have to answer similar questions around the applicant's helpfulness. Question 2 and Question 3 of Part 6 of Form I-918B should be streamlined and consolidated into one question. If the purpose of Part 6 is to identify and determine the "helpfulness of the victim," the agency can obtain this information by streamlining and leaving Question 1, "does the victim possess information concerning the qualifying criminal activity listed in Part 4" and a consolidated Question 2 and Question 3 to identify the helpfulness of the victim. A consolidated Question 2/3 could still allow the certifying agency to inform USCIS on how the victim was helpful and avoid redundancy.

c. Eliminate unnecessary questions on Form I-198B.

As noted in the instructions, the purpose of Form I-198B is to "provide evidence that the petitioner is a victim of a qualifying criminal activity and was, is, or is likely to be helpful in the detection, investigation, prosecution of that activity, or in the conviction or sentencing of the perpetrator." To do this, it is necessary for this certification to contain questions that help the certifying agency give information on the crime, who is certifying and where they work, and how the petitioner helped in reporting or investigating the crime. Not all questions added to the proposed Form I-918B help serve this purpose and instead unnecessarily lengthen the form and burden certifiers.

On amended Form I-918B, USCIS has provided space for the certifying agency to address the following requirements:

- Part 2, Information about the Certifying Agency and Officer
- Part 3, Case Information
- Part 4, Qualifying Criminal Activity Category
- Part 6, Helpfulness of the Victim

Within these sections, USCIS should streamline what information is collected and remove repetitive and unnecessary questions. For example, in Part 4 regarding the qualifying criminal activity and where it occurred, USCIS should eliminate the space for where the crime occurred. Where the activity occurred can be collected with the certifying agency information and with a simple answer to Question 7, "did the qualifying criminal activity occur in the United States."

USCIS should also eliminate the space given in the new Question 2 in Part 6 to explain how the petitioner was helpful. If the certifier checks that the petitioner was helpful, that should be sufficient. USCIS should not second-guess the certifier's assessment by asking for a detailed description that will burden the certifier.

In addition, the agency can eliminate the new Part 5, "Known or Documented Injury to the Victim." The additional questions regarding medical attention and injuries are likely to be only partially known, at best, by the certifier. The certifier is told to answer the question based on the interaction with the applicant, which may have been limited in scope and duration. Details on the medical attention and injuries suffered should be left to the applicant who can submit their medical records, evidence of treatment, etc.

III. Conclusion

We urge USCIS to consider these suggestions and amend the proposed revisions to Forms I-918, I-918A, and I-918B. Again, we are appreciative of the many positive changes proposed and encourage USCIS to maintain those changes while also addressing the concerns we have raised here with the proposed forms. These measures will aid in the agency's goals of streamlining adjudications processes and reducing backlogs. Please don't hesitate to contact us if there are any questions at akamhi@ilrc.org.

Sincerely

/s/

Alison Kamhi
Legal Program Director
Immigrant Legal Resource Center

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May 15, 2024

Ms. Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

RE: Comment in response to DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status;"
OMB Control Number 1615-0104 Docket ID: USCIS-2010-0004

Dear Ms. Deshommes:

Virginia Poverty Law Center (VPLC) is the statewide nonprofit that supports all the local legal aid offices in Virginia. Since 1978, VPLC has worked to break down systemic barriers that keep low-income Virginians in poverty. VPLC's Legal Assistance to Victim-Immigrants of Domestic Abuse (LA VIDA) program works directly with low-income, undocumented, or under-documented immigrants to provide a path to lawful immigration status. LA VIDA works exclusively with victims of domestic and sexual violence and those affected by human trafficking. Local legal aid attorneys have limited bandwidth to represent the myriad needs of low-income, legal aid-eligible, domestic and sexual violence victims. In addition, many low-income victim immigrants are unable to find qualified legal representation and must file U Visa petitions pro se. It is on behalf of all low-income, legal aid-eligible survivors of domestic and sexual violence that we submit the following public comments in response to the United States Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS) Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, published on April 17, 2024.

While we applaud USCIS' efforts to streamline and clarify the U Visa forms, we request that USCIS make additional changes to Form I-918, Form I-918A, and perhaps, most significantly, Form I-918B and corresponding Instructions.

I. LA VIDA commends USCIS for the following positive changes made to the U Visa forms.

1. The addition of Questions 14 and 15 in Part 1 of Form I-918 and Questions 12 and 13 on Form I-918A.
2. Combining questions about uncommon grounds of inadmissibility, such as combining whether the applicant intends to engage in prostitution, illegal gambling, bootlegging, or child pornography.
3. The removal of questions regarding uncommon grounds of inadmissibility such as J-1 visas, polygamy, stowaway, use of biologic agent, aiding terrorism, etc.
4. The removal of the requirement for mailing addresses for interpreters and preparers.

5. The removal of the unnecessary question about having received voluntary departure.
6. The removal of questions regarding membership in a Community Party or Nazi Party.
7. The removal of unnecessary questions about spouse and children from Form I-918 and I-918A.
8. The removal of the signature requirement for qualifying family members that live in a different country than the principal petitioner.

II. Comments and recommendations related to Form I-918B and Instructions

A. Part 4, Question 5 (I-918B): Remove the expanded question around culpability of the victim.

Proposed Form I-918B expands the questions about potential culpability of the victim. By doing so, Question 5 in Part 4 unnecessarily focuses attention on the victim's, instead of the perpetrator's, conduct. This is the very essence of victim blaming.

Congress created the U nonimmigrant visa in 2000 to protect victims of violent crimes and "encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against [them]." [1] Many immigrants come to the U.S. from countries where law enforcement has lost public trust. The U visa is a tool that helps law enforcement writ large develop lasting bonds with the immigrant community and encourages reluctant immigrant victims of crime to come forward to share information with law enforcement, regardless of their legal status. To unnecessarily focus on culpability of the victim goes against decades of public policy and principles of trauma-informed care and takes away from the task at hand—holding perpetrators of violent crime accountable.

There are only 16 states with U Visa certification laws as of January 1, 2022.[2] Throughout Virginia, and especially in rural communities, there are law enforcement agencies (LEAs) that lack proper training when responding to a domestic violence disturbance and sometimes disregard Virginia law of assessing "predominant aggressor" instead of "primary aggressor" —a basic principle of appropriate investigation of domestic violence crimes. Expanding Form I-918B to include a question about the victim's "culpability" is an invitation for LEAs to doubt a victim's story and to be less inclined to complete Form I-918B. This proposed added scrutiny of a victim's culpability may have the unintentional consequence of dissuading victims from collaborating with police and may instead provide more tools for abusers to wield control over their victims. To request that LEAs place additional focus and time on the potential culpability of the victim stands in conflict with one of the principal aims of the U Visa. For these reasons, USCIS should remove all references to and questions about the victim's culpability from Form I-918B and instead revise the instructions to refer certifying officials to the DHS Visa Law Enforcement Certification Guide for more information about best practices for submitting the certification.

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[1] (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464-1548, 1533-34 (2000).

[2] Catholic Legal Immigration Network (CLINIC), *States with U Certification Laws as of January 1, 2022*, https://www.cliniclegal.org/sites/default/files/2022-04/States%20With%20U%20Visa%20Certification%20Laws%20As%20Of%202022.01.01.pdf.

B. <u>Form I-918B should not be made longer.</u>

The proposed Form I-918B adds two additional pages. The goal of the U Visa is to protect victim immigrants, not cause impediments that delay this process.

C. Part 5: The proposed Form I-918B should be consistent when numbering questions.

In Part 5, there is no number for the question. While this is the only question in Part 5, USCIS wrote Question 1 in Section 8, which also only has one question.

D. USCIS should remove blank space on Form.

The following formatting changes are suggested:

1. Move Part 4, Question 4, currently on page 4 of the proposed I-918B to page 3, under qualifying criminal activity categories.
2. Move Part 5, currently on page 5 of the proposed I-918B to page 4, under Part 4, Question 7.
3. Move Part 8, currently on page 6 of the proposed I-918B, to page 5.

By moving the above listed questions, each to a previous page, the last page would be Part 9 only, the "Certification" section.

E. Part 4, Question 2: The space allotted for Certifying Officials should not be reduced.

While we applaud the addition of the word, "qualifying," before the phrase, "criminal activity," the two lines allotted for a response on Form I-918B, Part 4, Question 2, "Describe the qualifying criminal activity being detected, investigated, and/or prosecuted. […]" are inadequate. In previous iterations of this form, this section has been a tool for LEAs to include information about criminal activity being detected, investigated, and/or prosecuted as well as helpfulness of the victim. USCIS should revert to the space allotted in the current Form I-918B.

F. The proposed Form I-918B Instructions "best practice" of sealing Form I-918B is confusing, burdensome and does not allow petitioners an opportunity to review and understand all the evidence included in their petition.

The petitioner's declaration and certification states, "I certify, under penalty of perjury, that all of the information in my petition and any document submitted with it were provided and authorized by me, that I reviewed and understand all the information contained in, and submitted with, my petition, and all of this information is complete, true, and correct." If Form I-918B is sealed, petitioners cannot sign the certification stating they have reviewed and understand all the information contained in the application.

Furthermore, if LEAs who investigate a crime include derogatory information in a police report or on Form I-918B, USCIS may deny the U Visa based on that derogatory information.

Perpetrators often exploit a victims' lack of immigration status and limited English proficiency as a tactic of abuse, maintaining power and control by reinforcing fears of deportation. An incident report should not be provided to USCIS if the petitioner does not have access to review it. Moreover, police reports are excluded from federal criminal proceedings as unreliable hearsay evidence and cannot be considered part of the record of conviction to determine the scope of culpability and collateral consequences of a particular offense.[3]

Many petitioners are unable to obtain incident reports. For example, Under VA Code § 2.2-3706.1, Disclosure of law-enforcement records; criminal incident information and certain criminal investigative files; limitations, it states, "Criminal investigative files relating to an ongoing criminal investigation or proceeding are excluded from the mandatory disclosure provisions…"

By sealing Form I-918B and not requiring disclosure, the lack of transparency could lead to a detrimental outcome for petitioners and cause delays in the already backlogged U Visa process. "When USCIS bases an adverse decision on derogatory information that may be unknown to the benefit requestor, USCIS must provide the requestor an opportunity to rebut that information." See Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny, Subsection 4, Notices of Intent to Deny; See also 8 CFR 103.2(b)(16).

Sealing Form I-918B, without disclosing it to the petitioner runs the risk that incorrect or erroneous information will be submitted to USCIS necessitating Requests for Evidence (RFEs) and NOIDs that slow down adjudication. **USCIS should remove the requirement of sealing Form I-918B.**

If USCIS will not remove the expanded requirement to seal Form I-918B, USCIS should clearly state that this as a requirement and should require the certifying official to provide the petitioner with a copy of Form I-918B and any documents included.

For example, on page 1 of Form I-693, under "Applicant Instructions", it states,

> The civil surgeon must give you the completed Form I-693 in a sealed envelope for you to submit to USCIS. Do not accept the form from the civil surgeon unless it is in a sealed envelope. USCIS will return your Form I-693 to you if it is not in a sealed envelope or if the envelope is opened or altered in any way. The civil surgeon should also give you a copy of the completed Form I-693 for your records.

On page 4 of the proposed Form I-918 instructions, it states, "The Form I-918, Supplement B should be submitted to USCIS in an envelope sealed by the certifying official." On page 3 of

[3] *See* Mary Holper, *Confronting Cops in Immigration Court*, 23 Wm & Mary Bill Rts. J. 675, 685-6 (May 2, 2015) (describing the Senate report explaining the exclusion of police reports from the hearsay exception for public records), *Shepard v. United States*, 544 U.S. 13 (2005). *Cf.*, *Dickson v. Ashcroft*, 346 F.3d 44, 53-54 (2d Cir. 2003) (excluding the pre-sentence report prepared by the probation office from consideration as part of the record of conviction for determining removability due to its one-sided nature). *See also Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995), (noting that the BIA was "hesitant to give substantial weight to an arrest report, absent a conviction [of the alleged crimes] or corroborating evidence of the allegations contained therein.").

Form I-918B instructions, it states, "USCIS suggests the following best practices for submission of Form I-918, Supplement B." The word, "suggests," implies that this is not required but rather a suggestion proposed to certifying officials.

Furthermore, the instructions on how to seal Form I-918B are not clear. On page 3, under Best Practices, it states, "First, make **two copies** […]," one copy goes to the petitioner. "Second, *if possible* [emphasis added]," and lists 6 steps on how to seal the envelope.

If USCIS is going to require Form I-918B to be sealed, the instructions need to clearly state this requirement. Stating "USCIS suggests" is confusing and leaves room for interpretation. Creating a more burdensome process for certifying officials is contrary to the goal of the U Visa. If certifying officials do not know that sealing Form I-918B is now required, they will continue to provide an original to petitioners who in turn will submit U Visa petitions that USCIS will reject. This will not only cause delays in processing applications but also increase the burden on certifying officials to complete a second Form I-918B to allow the petitioner to refile.

USCIS should remove the requirement of sealing Form I-918B. In the alternative, if USCIS requires Form I-918B to be sealed, the instructions should clearly state this and require that an unsealed copy shall be shared with the petitioner.

G. Part 2, Question 4 (I-918B) is unnecessary and burdensome.

The expanded Question 4 in Part 2 asks "My name and signature have been provided to U.S. Citizenship and Immigration Services (USCIS) as an individual who is the head of a certifying agency or who is a designated certifying official."

Requesting or requiring certifying officials to provide their name and signature to USCIS, in addition to already providing it by completing Form I-918B, is burdensome. If USCIS requests certifying officials to submit their eligibility to USCIS, the proposed Form I-918B should include these instructions directly next to the question. USCIS could easily write a sentence beneath the question that informs the certifying official how to update or add their information by emailing LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov.

III. Comments and recommendations related to Form I-918, Form I-918A and Instructions

A. USCIS should eliminate questions that require petitioners to draw legal conclusions.

a. Part 2, Question 6 (Form I-918) and Part 5, Question 6 (Form I-918A)

In the proposed Form I-918, Part 2, Question 6, and on Form I-918A, Part 5, Question 6, asks if the applicant has "**EVER** committed a crime of any kind (even if [they] were not arrested, cited, charged with, tried for that crime, or convicted." This question requires applicants to understand local, state, and federal criminal laws in each location where they've spent time or resided and to draw a legal conclusion that their actions rise to the level of criminality. This question, as well as

many other questions triggering inadmissibility in Part 2, can be easily misunderstood by pro se applicants and involve legal conclusions.

b. Part 2, Question 26 (I-918) and Part 5, Question 26 (Form I-918A)

Part 2, Question 26 on Form I-918 and Part 5, Question 26 on Form I-918A, asks if the petitioner has ever claimed to be a U.S. citizen in writing or any other way. The inadmissibility ground under INA § 212(a)(6)(C)(ii) requires that the false claim be made for a purpose or benefit under the INA or any other federal or state law. The phrasing of the proposed question is overbroad.

IV. Conclusion

We urge USCIS to consider these suggestions and amend the proposed revisions to Forms I-918, I-918A, and I-918B. Again, we are appreciative of the positive changes proposed and encourage USCIS to maintain those changes while also addressing the concerns we have raised on the proposed forms. Please don't hesitate to contact us if there are any questions at lavida@vplc.org.

Sincerely,

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Submitted via www.regulations.gov

May 16, 2024

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship & Immigration Services
Department of Homeland Security

RE: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, USCIS-2010-0004; OMB Control Number 1615-0104

Dear Chief Deshommes:

Community Legal Aid Society, Inc. ("CLASI") submits the following comment in response to the U.S. Citizenship and Immigration Services ("USCIS"), Department of Homeland Security's ("DHS") Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, published on April 12, 2024.

CLASI is a not-for-profit law firm founded in 1946 to combat injustice through creative and persistent civil legal advocacy on behalf of vulnerable and underserved Delawareans. CLASI provides free civil legal services focusing on a variety of vulnerable groups of Delawareans including groups directly affected by this proposed rule, namely immigrant victims of crime, survivors of domestic violence, and survivors of human trafficking.

We welcome the opportunity to provide comments on these proposed changes. While CLASI commends some of the proposed changes published by USCIS, we believe there are some significant and unnecessary changes proposed that will place an extreme additional burden on survivors and victims, particularly non-English-speaking and indigent applicants, as well as additional burdens on law enforcement agencies attempting to work with immigrant victims of crime in order to make their

communities safer. This goes directly contrary to the purpose of the U Nonimmigrant process ("U Visa"), as expressed by Congress when enacting the U visa law.[1]

I. CLASI commends the agency for positive changes made to the U Visa forms and instructions.

CLASI commends some of the proposed changes by the agency as showing a positive trend to be more inclusive and make the U Visa forms more accessible.

a. Clarifying "victim" definitions

CLASI appreciates the addition of the definitions of the various forms of qualifying victims who may qualify for the U visa.[2] We believe this is particularly helpful for potential pro se applicants or pro bono advocates who may not be as familiar with the various definitions of what could qualify someone to be considered an eligible victim for a U Visa.

b. Gender inclusive options and language

CLASI applauds the agency for updating the Forms I-918, I-918A, and I-918B to include gender inclusive options for applicants. Having the option of "Another Gender Identity" is inclusive for all applicants/victims and we urge the agency to make this change to all immigration benefit forms.

c. Clarifying the definition of "smuggling" versus the definition of "trafficking"

CLASI appreciates the addition of the clarification of the difference between the definitions of smuggling and trafficking.[3] These are terms that laypeople frequently confuse and have very different implications for applicants. We believe this is particularly helpful for potential pro se applicants or pro bono advocates who may not be as familiar with the differences in the way that these terms have legal definitions in immigration law.

d. Specifying the signature requirements for the I-918 Supplement A

CLASI applauds the agency for explicitly clarifying on the I-918 Supplement A that only qualifying family members physically present in the same country with the principal petition must sign the I-918A. And if the qualifying family member is not located in the same country as the principal

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1 New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status. 72 Fed. Reg. 53014 ("The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.")

2 See proposed changes to pages 1-2 of the Form I-918/I-918A instructions

3 See proposed changes to page 7 of the Form I-918/I-918A instructions

petitioner, this change makes it explicitly clear that only the principal petitioner is required to sign the I-918A.

e. Providing the additional option to select "unknown" for questions on the I-918/I-918A

CLASI appreciates that the agency has added the option for petitioners/qualifying family members to select "unknown" to some "yes"/"no" questions on the I-918/I-918A forms. Specifically, on the proposed draft I-918 page 3, part 2, item 2 and on the proposed draft I-918A page 4, part 5, items 2-3, the agency has added the option for individuals to select "unknown" in relation to the question about whether they are now/have they ever been in exclusion, deportation, removal, or rescission proceedings. We believe this is important as many immigrant victims may have confusing information regarding their prior interactions with immigration officials, particularly if the incidents occurred many years ago or if they were children/infants when the incidents occurred, or if they had limited English or reading or writing capabilities. We believe this is particularly helpful for pro se and indigent applicants who may not know the various options as to how they can obtain copies or records of their immigration history or be able to afford these requests. We would urge the agency to make this addition to other related questions for applicants, as well.

II. CLASI strongly opposes certain proposed changes to the I-918/I-918A/I-918B requirements as contrary to the purpose of the U Visa and placing additional unnecessary burdens on the most vulnerable of populations.

While CLASI notes some positive proposed changes to the U visa forms and instructions, there are many proposed changes that will have a significantly negative impact and high burden on victims/survivors.

a. The Forms I-918/I-918A still include questions that ask applicants to draw legal conclusions

USCIS continues to require applicants to respond to questions requiring applicants to draw legal conclusions. For example, by asking applicants if they have committed a crime for which they were not "arrested, cited, charged with, tried for that crime, or convicted," this question asks applicants to understand the local, state, and federal penal codes everywhere they have lived and to draw a legal conclusion that their actions meet every element of any criminal statute where they have lived. Questions like this disadvantage pro se applicants in particular, as they require legal expertise.

b. USCIS is now requiring an I-192 Waiver of Grounds of Inadmissibility to be filed as part of the Required Initial Evidence

Previously, an I-192 Application for Advance Permission to Enter/Waiver of Inadmissibility was not required as part of the initial evidence for a U Visa application. Additionally, under the USCIS Policy Manual, in order to meet the required initial evidence for a Bona Fide Determination of a U visa explicitly

states that an Application for Advance Permission to Enter/Waiver of Inadmissibility is NOT required. These new instructions specifying that a waiver of inadmissibility is required as part of the initial evidence directly contradict USCIS's own policy manual and will lead to confusion among advocates and pro se applicants regarding the required initial evidence for the U visa. There are a number of reasons as to why an I-192 application may not be filed at the same time as the initial U visa application, even now that the I-192 application is fee exempt. Some of these include the fact that the I-192 application requires significantly more historical information (such as the applicant's address history and dates of residence, as well as employment history and dates of employment, from the previous five years).

This information can take time for applicants to obtain and recall, especially if the applicant is a qualifying family member living in a different location from the principal petitioner. Frequently, applicants are running up against deadlines to file the U visa petition, such as the expiration date of the I-918B certification or age-out deadlines related to derivative qualifying family members. There are other outside pressures to file U Visa applications as quickly as possible, such as if the victim applicant has an upcoming ICE check-in or hearing in removal proceedings. Requiring the I-192 to be filed at the time of the I-918/I-918A would cause additional difficulties for applicants to meet these deadlines. Furthermore, the details required on the I-192 application also make it more difficult for pro se/non-English reading/writing applicants to compile the required initial evidence for the U visa. This requirement makes the process even more intimidating and challenging for pro se applicants to get the initial application filed. There appears to be no significant benefit to USCIS as the I-192 is still required prior to final adjudication of the U visa, and USCIS is not requiring it for a Bona Fide Determination of the U Visa. Therefore, requiring it as part of the initial evidence now seems to be unnecessary and just causes further difficulties for the victim applicant.

c. <u>USCIS proposes requiring that the I-918B Law Enforcement Certification be submitted in an envelope sealed by the certifying agency</u>

USCIS's proposed change to require applicants to submit the I-918B Law Enforcement Certification in a sealed envelope from the Law Enforcement Agency ("LEA") is a massive change from prior practice and will cause significant burdens on both the victim applicant and the LEA. These includes some additional basic costs that add up over time (cost of postage for mailing/re-mailing certifications that are unintentionally opened, cost of printing additional copies), and some of these costs are placed on the victim applicant or the non-profit agency working with them on their case. Various LEAs have different signing policies, and some refuse to re-sign I-918Bs or require applicants/advocates to obtain these in person. This new requirement would lead to additional costs associated with complying with local LEAs various signing policies. While these costs may seem minimal, when LEA's and non-profits handle large volumes of these cases, these costs really come to a significant amount.

In addition to the monetary cost, there is the time cost. LEA's already struggle to meet the demand of these I-918B requests from both pro se applicants and advocates. Many LEA's struggle to understand the current requirements for these forms. Many accidentally utilize old versions of the forms (especially when none of the questions on the forms change, simply the edition date changes) or do not fill out all

questions on the form. USCIS has not mandated a national policy regarding the I-918B Certification signing policy for every law enforcement agency throughout the country. Different agencies have different policies, some do not have a direct contact to make these requests and simply have a general email or mailbox where requests are sent. Some agencies have policies that they will not re-sign I-918B certifications for any reason. Some do not notify advocates/applicants in advance that they have approved a request for an I-918B, and it is not known that a request has been granted until the signed certification is received in the mail. For example, CLASI had a case in which we requested an LEA certification from an LEA and did not hear anything from them for 1.5 years, despite follow up emails and phone calls to the Chief and administrative office. Then, after 1.5 years, we suddenly received the signed I-918B certification in the mail. The signed certification was not labelled in any special way that would have identified it as a signed certification for a particular client. There was no way our agency, or a pro se client, could know that it was a signed certification before opening it. Should this rule have been in place at the time, CLASI would have had to have obtained a newly sealed certification, which could have taken another 1.5 years. The result would have been to cause unnecessary additional delays for the victim of this case, causing added insecurity to an otherwise fully eligible applicant.

For non-profit agencies, such as CLASI, that handle a large volume of these cases, LEAs often reduce costs by mailing batches of signed certifications together. Requiring that each one be sealed and filed unopened would lead to confusion and possible unintentional errors for applicants and non-profit organizations.

Advocates frequently catch errors upon receiving the signed I-918B and are able to reach out to LEAs directly to attempt to obtain newly signed/corrected versions. However, even in these cases, there are frequent delays in obtaining new, corrected certifications. If advocates are not able to view the signed I-918B, they are not able to point out these errors. And while these errors may seem minor, they are certainly errors that would be noted by USCIS and lead to possible denials or Requests for Evidence or rejections down the line, through no fault of the victim applicant. Without reviewing the signed certification, advocates/victim applicants cannot even verify the official date that the certification was signed, which renders them unable to determine the exact expiration date of the certification.

Many LEAs view these requests as low priority or can be reluctant to sign certifications in the first place, which often leads to delays with obtaining these certifications already. Therefore, placing these additional requirements that appear arbitrary and finicky can lead to them choosing not to sign or re-sign at all, or at the very least lead to additional delays in an already lengthy and protracted process. And the person who suffers from the effects of this is the victim applicant. Making it more difficult for LEAs to certify victim applicants' eligibility for the U visa is completely contrary to the purpose behind the existence of the U Visa.[4]

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4 New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status. 72 Fed. Reg. 53014 ("The purpose of the U nonimmigrant classification is to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking in persons, while offering protection to alien crime victims in keeping with the humanitarian interests of the United States.")

These negatives appear particularly egregious given the fact that the positives do not appear particularly significant. If LEAs are concerned about changes being made to their certifications after the fact, they have a direct contact to USCIS via phone: 240-721-3333 and via email: LawEnforcement_UTVAWA.VSC@USCIS.dhs.gov, as noted in USCIS's publication "U Visa Law Enforcement Resource Guide." USCIS also recommends that LEAs retain copies of their final signed certifications for their records. If USCIS has specific concerns regarding any possible changes being made to the LEA certification after the fact, USCIS can also contact the LEA directly to request information or can issue a case-specific Request for Evidence to the applicant, requesting clarifying information or documentation.

As previously noted, this requirement will lead to additional Requests for Evidence ("RFE") (which have statutory maximum response deadlines) or outright denials of U Visa applications through no fault of the victim applicant. If an RFE is issued, the victim applicant will have to respond within 12 weeks.[5] If the request is for a newly signed I-918B (due to the prior sealed one being on a wrong edition of the form, or not being fully completed, or missing a page, etc.), the ability of the applicant to obtain the signed certification within the required timeframe is entirely dependent on the LEA. As previously stated, many LEAs do not prioritize these requests and they very frequently take longer than 12 weeks to provide a signed certification. LEAs nationally do not have a set timeframe by which they must respond to requests for these certifications. The result, again, is that the victim applicant suffers, either by a denial of their application or further delays, through no fault of their own.

d. The list of required documents related to an applicant's arrest history are overbroad, unnecessary, prejudicial, and, in some cases, legally impossible to provide

USCIS proposes expanding the required documents related to any applicant/qualifying family member's criminal history. Many of these required documents are unavailable by law and obtaining them or sharing them would be illegal. Additionally, the cost on pro se victim applicants and non-profits is significant as certified court and police records have associated costs. This also creates additional hurdles for non-English speaking pro se applicants who may not be able to communicate what documents are needed to the various agencies or find information regarding the process by which to request these documents. Furthermore, some of the documents required under the proposed changes are highly prejudicial, unreliable, and contain hearsay, rendering their weight in the process very minimal. The burdens on the victim applicant far outweighs any possible benefit to USCIS.

i. Accessing police reports/arrest records

The proposed changes would require any applicant who has been arrested or convicted (even if the arrest/conviction was expunged, vacated, sealed or otherwise removed from their record) to include an original or certified copy of the complete arrest report.[6] This requirement is problematic and contrary to

5 See 8 CFR § 103.2(b)(8)(iv)
6 See proposed changes to page 6 of the Form I-918/I-918A instructions

USCIS policy in a number of ways. Police reports are not part of the record of conviction specifically due to their inherent unreliability. See Federal Rule of Evidence § 803(8)(B); U.S. v. Mezas de Jesus, 217 F.3d 638 (9th Cir. 1999). Police reports contain hearsay that often includes inaccurate information extremely prejudicial to the applicant. The process does not provide the applicant with an opportunity to cross examine the reporting officer directly regarding the content of the report. Given the significant impact that loss of access to an immigration benefit can have on an applicant, the requirement to submit such an inherently unreliable document to USCIS would be highly prejudicial. Additionally, this requirement is contrary to USCIS's own prior statements upon which advocates have relied for the past twelve (12) years. Specifically, at the Vermont Service Center ("VSC") Stakeholder Event on October 18, 2013, VSC indicated that if the final disposition has been submitted, applicants should not be required to submit charging documents, such as police reports.[7] This feedback was in response to a Stakeholder's citation of VSC's Teleconference in September 2012. In the Teleconference, an advocate questioned VSC about RFEs seeking arrest records outside the record of conviction. VSC responded "that [officers] should be applying the law on what constitutes a record of conviction."[8]

This requirement would specifically harm domestic violence and trafficking survivors, in particular. Domestic violence survivors are often arrested at the scene of the incident with their abuser, with facts being revealed later that lead the law enforcement agency or prosecutor to understand that the abuser was the aggressor and dismiss charges against the survivor. But that initial report from the scene of the incident often contains inaccurate and prejudicial information regarding the actual victim in the case. Often, this is due to the survivor not speaking or understanding English and the law enforcement agency not having an adequate interpreter at the scene, or even fear/mistrust of law enforcement. This can also be due to intentional or unintentional bias toward immigrant victims, especially in situations where the abuser/trafficker is a U.S. citizen or native English speaker, and the victim is an immigrant/non-English speaking person. Similarly, U.S. citizen abusers/traffickers are frequently more familiar with the criminal system in the United States and use that to their advantage or as part of their abuse toward the immigrant victim. Additionally, domestic violence survivors and survivors of human trafficking often have criminal histories directly related to their victimization. Requiring unreliable documents such as arrest reports, which often have no mention of the domestic violence or human trafficking at the root of the alleged criminal activity, is highly prejudicial toward the immigrant survivor and should not be used against them.

The cost of obtaining these additional certified records is significant and could be prohibitive for pro se victim applicants and non-profits. For example, some agencies require the victim applicant to request and pick up records in person and will not release them to the victim applicant's advocate. If the crime occurred in a different state, this would require the victim to travel to the original location where the crime occurred to request these records and pick up the certified copies. These costs are separate from whatever fees the individual agency may charge for certified copies. Additionally, a victim may face language access issues and fears/trauma related to interactions with law enforcement. In Delaware, victims of crime have a right to access their initial victim report.[9] However, full arrest information is stored in the

7 VSC Stakeholder Notes by ASISTA for VAWA Teleconference held on September 28, 2012
8 Id. at p. 20, Question 7.
9 See 11 Del. C. § 9410

Delaware Criminal Justice Information System ("DELJIS"). Only individuals who have met all the requirements under 11 Del. C. § 8610 have access to full details in arrest reports through DELJIS. Any violation of these rules and regulations is a Class A misdemeanor.[10] CLASI and other non-profit organizations in Delaware do not have access to these records, much less pro se applicant victims. In some states, a subpoena is required to obtain these records. For non-profits or pro se victim applicants to have to file complaints and subpoenas for these records places an additional financial and time burden upon them when filing the initial application. This further prolongs an already protracted and intensive process.

ii. <u>Juvenile records</u>

USCIS proposes explicitly requiring applicants to disclose all arrests and charges, even if the arrest occurred when they were a minor. Across the United States, juvenile justice systems exist to adjudicate violations of the law by children. The bedrock of these systems is knowledge of the developmental differences between children and adults and the recognition that violations of the law by children should not be adjudicated in the same manner as adult violations. As a result, juvenile systems utilize early intervention, community-based resources, and rehabilitative efforts as opposed to punishment. Inherent in the purpose of this juvenile justice system is the concept that the legal transgressions of a child should not follow the individual into adulthood. The U.S. Supreme Court acknowledged this purpose in 1967, stating that "the policy of the juvenile law is to hide youthful errors for the full gaze of the public and bury them in the graveyard of the forgotten past."[11] Therefore, most juvenile justice systems, including the federal system, have confidentiality provisions. The intent of these provisions is to protect young people from the negative life-long consequences of court involvement in their childhood when those proceedings are made publicly available. USCIS's proposal of requiring applicants to disclose childhood violations of the law is squarely at odds with the law and policy at the foundation of juvenile justice systems.

Federal law specifically protects the records of juvenile delinquency proceedings, both during and at the completion of proceedings, from disclosure to unauthorized persons. See 18 U.S.C. § 5038 (a). In most cases, access to these records is limited to the parents or guardians of the juvenile, law enforcement, school authorities, and attorneys for the juvenile or government agencies. Many states have laws regarding the accessibility of juvenile records, with the majority of states shielding at least some juvenile record information from public availability.[12] Some states do not allow any public access to juvenile records.[13]

Consistent with federal law and societal policy regarding juvenile proceedings, Delaware law establishes a juvenile justice system, known as the Juvenile Offender Civil Citation Program with the stated purpose of providing a "civil alternative to arrest and criminal prosecution for eligible youth who have committed acts of delinquency."[14] When a juvenile completes all terms and conditions of the

10 See 11 Del. C. § 8608

11 *In re Gault*, 387 U.S. 1, 32 (1967).

12 See "Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records." Juvenile Law Center. https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf

13 <u>Id.</u>

14 10 Del. C. § 1004A

program, the child is discharged without arrest. This law fulfills the underlying intent of the juvenile justice system to provide rehabilitation rather than punishment for children. Additionally, the Delaware General Assembly enacted laws to protect children from unwanted damage that may occur as a result of a juvenile criminal history, explicitly finding that "a juvenile criminal history is a hinderance to a person's present and future ability to obtain employment, housing, education, or credit."[15] The proposed USCIS change requiring disclosure of juvenile criminal history and records is squarely at odds with the intent of the Delaware General Assembly.

Importantly, the American Bar Association ("ABA") recently adopted a policy addressing the collateral consequences of the disclosure of juvenile records. The policy recognizes the long-lasting negative effects of these records and states, in part, that "[l]aws, rules, regulations and policies that require disclosure of the juvenile adjudications can lead to numerous individuals being denied opportunities as an adult based on a mistake(s) made when they were a child."[16] Going even further, the ABA adopted a Model Act governing "the confidentiality and sealing and expungement of juvenile records" reflecting the important role each of these steps play in ensuring increased opportunities for individuals with prior juvenile delinquency.[17]

Finally, and most importantly, immigration law does not support the consideration of juvenile records when making discretionary decisions in immigration adjudications, as noted in the BIA case *Matter of Marin*.[18] The BIA held that juvenile adjudications are not treated as convictions for purposes of immigration law, recognizing that juvenile cases are not handled as criminal cases under state law. Even the U.S. Supreme Court has recognized that juvenile violations of the law are not indicative of the juvenile's future adult character and actions.[19]

iii. Expunged/Vacated/Sealed records

Additionally, USCIS proposes that applicants provide a certified copy of the court order vacating, setting aside, sealing, expunging, or otherwise removing the arrest or conviction. This proposed change represents an undue and excessive burden on advocates and pro se applicants. The proposed policy change is completely contrary and counterintuitive to the intent behind statutes providing for expunging, vacating, and sealing criminal records.

For example, the Delaware General Assembly "finds that a criminal history is a hindrance to a person's present and future ability to obtain employment, housing, education, or credit" and thus enacted legislation "intended to protect persons from unwarranted damage which may occur when the existence

15 10 Del. C. § 1014

16 See "Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records." Juvenile Law Center. https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20 -%20final%20for%20web_0.pdf.

17 Id.

18 16 I&N Dec. 581 (BIA 1978)

19 See *Roper v. Simmons* 543 U.S. 551 (2005)

of a criminal record continues indefinitely."[20] Clearly, the change proposed by USCIS is contrary to this legislative intent since it would require applicants to not only disclose but also provide documentation of prior criminal history that no longer exists in their own records. The same Delaware legislation provides that it is unlawful for any person having access to an expunged record to disclose any information from the record to another person absent a court order, other than disclosure to law enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application.[21] Thus, USCIS's proposed requirement of applicants to obtain and provide copies of expunged, vacated, or sealed records is contrary to Delaware law.

Additionally, the proposed change would be an undue burden on applicants and advocates since the records are, by definition, unobtainable – a fact that USCIS neglects to recognize in this proposed change. As discussed above, not all law enforcement or court agencies are willing or able to provide letters or proof of records that are inaccessible. Obtaining a certified copy of court or law enforcement records represents a financial and temporal burden for advocates and pro se applicants, particularly when language barriers exist for applicants.

According to the Restoration of Rights Project, most states, in fact forty-six (46) of the fifty (50), offer expungement, sealing, or some other form of record relief for criminal histories.[22] Among those forty-six states, the ones that do not offer court sealing of records make relief available to limited categories of convictions such as those for juvenile drug convictions and convictions for human trafficking victims.[23] Nearly all states authorize the sealing of some non-conviction records.[24] Given the prevalence of record relief offered across the majority of U.S. states, the proposed USCIS policy of acquiring and submitting certified records of expunged, sealed, or vacated records would clearly be an undue and unnecessary burden on pro se applicants and advocates.

e. <u>Additional questions to the Form I-918B that provide an additional burden on law enforcement certifiers and victim applicants that far outweighs any possible benefit to USCIS.</u>

As previously noted in response to other proposed changes by USCIS to the LEA certification requirements, LEAs already struggle to meet the demand of these I-918B requests from both pro se applicants and advocates, and many struggle to understand the current requirements for these forms. Some of the proposed changes to Form I-918B are unnecessary and will only further this confusion and burden on LEAs.

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20 See 11 Del. C. § 4371.

21 11 Del. C. § 4376

22 See https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside-2-2/

23 Id.

24 Id.

i. <u>Question as to whether name and signature have been provided to USCIS as either the head of the certifying agency or as a designated certifying official.</u>

Under their proposed changes, the agency is requesting that the LEA answer either "yes" or "no" whether the name and signature of the signor has been provided to USCIS previously. The necessity of this questions is unclear. Again, if USCIS has concerns regarding the validity of the signed certification or whether the signor has the authority to sign the certification on behalf of the agency, they have the option to contact the agency directly. Some LEAs may not remember whether they have previously submitted a signed certification to USCIS previously. And should they respond "no", there is no direction as to what the effect would be on the applicant's U visa decision or what the LEA signor would need to do to ensure that there is no negative impact on the applicant's case. Generally, when the signor of the certification is the head of the agency, LEAs do not provide separate confirmation of their authority to sign these certifications as the authority is inherent in their position as the head of the agency. So, this would require additional documentation from the LEA. As previously noted, LEAs already struggle to meet the demand of these I-918B requests from both pro se applicants and advocates, and many struggle to understand the current requirements for these forms. Given that any concerns related to fraudulent certifications or unauthorized certifications can be alleviated through already existing means, this change appears to be unnecessary and simply a further burden on LEA signors and victim applicants.

ii. <u>Question as to whether the victim was culpable in the qualifying criminal activity detected, investigated, or prosecuted.</u>

USCIS is proposing to add information about the possible culpability of the victim. Specifically, USCIS is proposing a completely open-ended question for LEA certifiers: "The victim was culpable in the qualifying criminal activity detected, investigated, or prosecuted." This question, without any qualifying language, allows the agency official who might not have proper training to assign culpability where there may be none or where they may not have proper training to recognize the situations that arise from being a victim of a crime, particularly in situations of domestic violence and human trafficking. This question does not specify that the culpability meet any legal requirement (such as an arrest/probable cause, a conviction, etc.), just that the certifier finds that the victim was culpable in the qualifying criminal activity in some way. Additionally, the U Visa Law Enforcement Resource Guide ("Guide") already provides explicit instructions to LEAs regarding situations where a requestor is culpable in the qualifying criminal activity. Specifically, USCIS already instructs LEAs that "a person is not eligible for a U Visa if they are culpable for the qualifying crime(s) being investigated or prosecuted."[25] The Guide also notes that if the LEA certifier has concerns regarding the applicant's possible culpability in the qualifying crime, they can still complete the certification for the victim and note their concerns about the victim's culpability on the existing form.[26] This additional question, therefore, is duplicative and unnecessary under USCIS's own current procedures and policy.

25 See "U Visa Law Enforcement Resource Guide," at page 6.
26 <u>Id.</u>

Conclusion

While CLASI commends some of the proposed changes published by USCIS, we urge USCIS to seriously consider our notes and concerns regarding the significant negative impact and burden some of the changes would have on victim applicants and law enforcement agencies working with immigrant victims. Many of these changes are duplicative or provide limited benefit to USCIS when contrasted with the burden they place on victims and non-profit organizations assisting victims. We implore the agency to bear in mind the purpose of the U visa, which was established by Congress to strengthen the ability of law enforcement agencies to investigate and prosecute some of the most heinous crimes in our communities, while offering protection and stability to immigrant crime victims, as a way to make our communities safer as a whole. Any proposed changes to the requirements and the forms for U Visa applicants should be viewed from this lens, with the goal of excising any unnecessary burdens on victim applicants, who remain in an extremely vulnerable position in our society.

Respectfully submitted,

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May 17, 2024

Chief Samantha L. Deshommes
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

RE: **Docket Number 2024-08185**
OMB Control Number 1615–0104
Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status

Submitted online at regulations.gov

Dear Chief Deshommes:

On behalf of ASISTA, I submit this response to the reopened notice and request for public comment published in the Federal Register on April 17, 2024, entitled "Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status." 89 FR 27439. The document proposes revisions to forms and instructions associated with petitions for U Nonimmigrant Status. We appreciate the opportunity to provide additional comments.

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of crime and violence. Our agency assists advocates and attorneys across the United States in their work on behalf of immigrant survivors, so that survivors may have greater access to protections they need to achieve safety and independence. Based upon this extensive expertise, we respectfully make the following observations and recommendations regarding the proposed revisions to Form I-918, Supplement B, and the instructions for that Form as well as for Form I-918, all key documents in the application process for survivors seeking U nonimmigrant status.

I. Form I-918, Supplement B, Part 1

Observation: ASISTA commends USCIS for significantly clarifying in the Form Instructions how to fill out Part 1, Items 1-5, General Information About the Victim, in cases of indirect or bystander victims. To ensure these instructions are followed and confusion is not created, ASISTA recommends additional brief directions on the form itself.

Recommendations: One option could be adding a parenthetical to both the Title to Part 1, and Item 1, such as, "General Information About the Victim (whether target victim, indirect victim, or otherwise)" and "1. Victim's Full Legal Name (Name of person for whom you are executing the certification, whether or not they are officially named as a victim in your agency's records)." In addition, because ASISTA is aware of agencies that have refused to certify direct victim cases based on the name of the victim not appearing in official records of that agency (for bystanders) or for a specific charge (for direct victims demonstrably detected as a direct victim of the qualifying crime, but recorded as primarily being a victim of a different crime), it could be helpful to remind certifiers of their options by adding a question such as, "If this person is not officially named as victim in your agency's records, please indicate basis for completing this certification for them. (*See* Instructions Supplement B, at "Who is Eligible for U Nonimmigrant Status?)" Options could be offered as described below, or a blank space could be provided:

- Person is an indirect victim
- Person was identified as victim after agency record made
- Person appears eligible to request a certification as a bystander

ASISTA also suggests removing the instructions to indicate the name, date of birth, and relationship of the target (named) victim in Part 10. *See* I-918 Supplement B Instructions at 4, Item Number 1. This information is ordinarily either (a) available in the attached agency report (name), (b) better-documented through other means (birthdate and relationship), and/or (c) not available or relevant (e.g., for direct bystander victims or direct victims of a mass event). ASISTA believes seeking this information through the form instructions has the potential to violate privacy interests of victims external to the case, while providing little, if any value to the agency.

II. Form I-918, Supplement B, Various Parts (1, 4, 6, and 7)

Observation: Related to Comment I above, further clarification may be needed throughout the Form, on how to fill out various questions when the subject of the certification is a bystander or indirect victim.

Recommendations: For Parts 1, 4, and 6, ASISTA recommends including parenthetical reminders of how to fill out the form for bystander and indirect victims. Where appropriate, after the word "victim," we suggest adding a parenthetical like, "(whether target victim, indirect victim, or otherwise)."

In Part 7, it would also be appropriate to specify whose family members USCIS is inquiring about. ASISTA suggests a family relationship between the perpetrator and *either* the target victim *or* the bystander victim (or both) could be relevant, to identify if the qualifying crime of domestic violence occurred, and/or if the bystander victim's injury may have been unusually direct, foreseeable, or severe. *See, e.g., Matter of 10107209* (AAO, Jan. 14, 2021) (unpublished) (approving a bystander case where there was a romantic relationship between the perpetrator and target victim, and a family (essentially, step) relationship between the perpetrator and bystander victim). A similar introductory sentence to the one described for Part 5 would be helpful.

III. Form I-918, Supplement B, Part 3, Item 2

Observation: On p. 2, Part 3, Item 2, a proposed change specifies that USCIS seeks the Case Number only "from Police Report." This could create hurdles or hesitation for certifiers who are not police, especially for cases where police were never involved, such as investigations by a child or elder abuse agency, or labor agency.

Recommendation: ASISTA recommends removing the added language. If USCIS believes it is essential to indicate this case number should be associated with the investigation, we recommend rephrasing the addition to "from agency investigation," or something similarly broad.

IV. Form I-918, Supplement B, Part 4, Items 1 and 2

Observation: ASISTA commends USCIS for adding language to Part 4, Items 1 and 2, that hints at certifiers' ability to list and certify based on crimes merely detected but not formally recorded

or pursued. It is ASISTA's observation that certifiers are very frequently confused by how to fill out a certification where the qualifying activity was identified but not charged, or not documented in official records. This results in certifications that entirely omit statutes for uncharged activity and thus inadvertently portray a qualifying crime as a non-qualifying one. *See, e.g., Matter of J-J-D-H-,* ID# 13865 (AAO, Dec. 13, 2016) (unpublished). When this happens, it can lead to RFEs, NOIDS, or even denials and re-filings that could have been avoided if the form and instructions were clearer. Given the enormous backlogs and wait-times for U petitions, and the reluctance of some certifiers to re-certify once many years have passed or their agency head has changed, eliminating such avoidable inefficiencies should be viewed as a matter of justice and administrative imperative, and treated as high priority.

Recommendations: ASISTA recommends additional language clarifying this basis for certification in the proposed form. For Item 1, the sentence could read something like, "Include citations for all crimes detected, whether formally investigated or charged, or not." For Item 2, something like, "Include all qualifying criminal activity detected, whether it was formally pursued in your investigation or not." If desired and helpful, a space could be provided with instructions that, "If you are certifying based on a detected crime that was not formally investigated or charged, you may provide an explanation here (optional)."

V. Form I-918, Supplement B, Part 4, Items 3 and 4

Observation: ASISTA appreciates USCIS's decision not to ask about "other" or "related" or "similar" activity in the same question as it lists the qualifying criminal activity categories. In prior form versions, certifiers were provided a list of qualifying crimes that included the option to indicate another "related offense" or "other." Certifiers frequently used those boxes without awareness of the adjudicatory outcomes, resulting in denials of applications that could have been approved if the certifier had properly indicated with the boxes that they detected an actual qualifying crime, instead of indicating only that they had actually charged (or prosecuted or otherwise formally investigated) a crime that was not qualifying but seemed "related" to them.

ASISTA applauds the move away from that model, but believes similar confusion will arise here, due to certifiers using a colloquial understanding of the phrase "similar to." Thanks to regulation and a long pattern of administrative decisions hyper-focusing on identical elements, USCIS

adjudicators interpret "similar" much more narrowly than a certifier is likely to do. *Compare, e.g., Merriam-Webster Dictionary,* https://www.merriam-webster.com/dictionary/similar#:~:text=1,in%20substance%20or%20essentials%20%3A%20corresponding, (last updated May 5, 2024) (defining "similar" as "having characteristics in common: strictly comparable"), *with, e.g.,* 8 CFR 214.14(a)(9) (defining "any similar activity" much more specifically, as offenses "in which the nature and elements of the offenses are substantially similar"); *see also, e.g., Matter of 14738243* (AAO, Aug. 20, 2021) ("Mere overlap with, or commonalities between, the certified offense and the statutory equivalent is not sufficient to establish that the offense 'involved'—or was 'substantially similar' to—a 'qualifying crime or qualifying criminal activity.'"). The proposed question at Part 4, Item 4, will encourage certifiers not to check a box for a qualifying crime, even if one was detected, in favor of taking what they will see as the more straightforward and equally effective route of describing a crime they think is "similar" instead. The high likelihood that the similarities the certifier identifies will fall short of the legal standard USCIS employs for similarity will cause such certifications to fail based not on the merits of the underlying case, but the predictable confusion of the third party certifier about how best to describe the conduct and complete the form.

Recommendations: To avoid the confusion, this question should be eliminated. Qualifying similarity is a legal conclusion within the purview of USCIS, and one for which the certifier's uninformed opinion is not relevant. *See* Proposed Instructions at 5 (describing how "USCIS determines whether the criminal activity is substantially similar to a qualifying criminal activity"). The question's propensity to derail a meritorious case is not outweighed by any meaningful information gain.

If USCIS disagrees and believes there is critical factual information to seek from the certifier on this subject, which is not elicited elsewhere, that information should be sought more specifically, in short-answer questions, rather than an open-ended question that may cause certifiers to believe their information is sufficient when it is not. To do otherwise is to invite adjudicators to give substantial weight to an answer provided under circumstances known to be ripe for confusion by people with inadequate background knowledge of what information would be necessary to provide in the "detailed explanation." *See* 72 Fed. Reg. at 53024 (*supra*). It would invite arbitrary denials based not on the merits of the case, but the misunderstanding, brevity, or communication

deficits of an uninformed third party certifier – and often a certifier who is unwilling to expend additional time correcting their actions in response to an RFE.

An example of a clearer way to elicit information and not invite a mistaken legal conclusion would be a series of short questions, similar to those added to the revised form for enumerated offenses, such as, "If the qualifying criminal activity named at Part 4., Item Number 1. is not listed in Part 4., Item Number 3, do you believe it is substantially similar in its elements to one or more of the listed categories (for example, similar to felonious assault)? [Yes/No/Not Applicable checkboxes.] If yes, to which listed crime is it similar? [Short answer space.] Please list the elements of the crime you detected, investigated, or prosecuted, that you believe is similar to a qualifying crime. [Provide two blank lines.] Please indicate whether it is a felony or misdemeanor. [Provide checkboxes.] Please list the elements of the qualifying crime you believe it is similar to. [Provide two blank lines.] Please indicate whether the qualifying crime is a felony or misdemeanor. [Provide checkboxes.]." Of course, it may not be necessary to request certifiers to list the elements of a crime, now that a quick internet search can return that information based on the statutory citation. As noted below, keeping the form as short and simple as possible should also be viewed as a virtue.

ASISTA echoes prior comments that the length of the form overall should be considered when this change is considered, because a longer form may increase reluctance by an agency to bother completing the form. ASISTA believes the possibility of gaining information by this question or question series is not worth the added length, but that it would be better to take the extra space than to permit a confusing format to lead to further administrative inefficiencies and unjust denials of meritorious claims as have occurred in the past.

VI. Form I-918, Supplement B, Part 5

Observation: ASISTA applauds USCIS's decision to remove inquiry into medical attention received by the survivor. Now, the revised form proposes to ask certifiers about known or documented injuries to victims. However, this is a subject that was not intended by the regulators to be a topic for certifications, and one for which certifiers do not have an ideal vantage point. See 72 Fed. Reg. at 53024 (describing the topics that should be certified, per the regulations, which do not include injury, and noting these were selected because the "agency is in the best position to

verify" this information). Given that certifications are afforded significant weight compared with other evidence, this could easily result in adjudicators unduly relying on inaccurate or incomplete information. *Id*. (noting that "USCIS will give a properly executed certification on Form I-918, Supplement B, significant weight"). Many injuries are not known or are only partially known at the time a victim interacts with a first responder like the police. Many victims also may not wish to discuss all of their injuries with a law enforcement agent. Further, many law enforcement agencies may not record mention of certain injuries if they do not seem relevant to the agency's own investigation, even if the survivor does point them out. As such, victim injury is not a topic for which the law enforcement perspective merits special, significant weight. It should not be included as a question on the Supplement B when any answer may be unreliable for the reasons just stated.

Recommendation: ASISTA agrees with a comment from the Legal Resource Center that Part 5 should be struck entirely from the form. Only by fully eliminating the question will USCIS properly uphold the intent of the regulators and prevent undue weight from being placed on unreliable information.

Should USCIS not choose to strike all enquiry into known or documented injuries, which is ASISTA's strong recommendation, we recommend adding an explanatory parenthetical (or full sentence) to the question, because injuries to multiple people could be relevant and helpful for USCIS to know. For instance, in a bystander victim case, it would be relevant whether the bystander victim is known to have suffered any injuries, because that could shed light on the element of substantial harm, as well as on whether the bystander suffered harm that was unusually direct and foreseeable. *See* 72 Fed. Reg. 53014, 53016-17 (Sep. 17, 2007); *see, e.g., Matter of 16171801* (AAO, Dec. 1, 2021) (unpublished) (approving a bystander case in part based on the direct and severe harm to the bystander of a kidnapping, which appeared in police reports). It would also be relevant whether the police detected certain injuries against the target victim, because in many jurisdictions that could be relevant to whether a felony assault was detected, as well as, again, bearing on whether the harm suffered by the bystander was unusually direct and foreseeable. E.g., NY Pen. Law § 120.10(4) (defining assault in the first degree based on serious physical injury.); *Matter of 1421084*, at *7 (AAO Feb. 5, 2021) (unpublished) (recognizing that a particularly severe injury to a target victim may strengthen a bystander claim). For this reason,

we also suggest adding a third introductory sentence to this Part, reading something like, "If the person for whom you are completing this certification was not the target victim, please describe known injuries to both the target victim, and the person for whom you complete the form."

VII. Form I-918, Supplement B and Form Instructions, Part 6 (Helpfulness)

Observation: ASISTA notes and appreciates that there is an explanation *that* Part 6 may be filled for individuals whose claims turn on the helpfulness of another—i.e., a child under 16 or an otherwise incapacitated applicant—or who are not the named victims in the certifying agency's reports—i.e., bystander and indirect victims. However, the Form and Instructions lack direct information on *how* to complete this section in such circumstances.

Recommendations: We suggest adding a clear indication to the Form *and* Instructions regarding how to complete this Part in the above scenarios. For instance, after the existing introduction that child or incapacitated survivors may have their parent, guardian, or next friend act on their behalf, in the Form, add a direction such as, "For these victims, you may read and complete the questions by substituting the words, 'parent, guardian, or next friend,' in place of the word 'victim.'"

VIII. Form I-918, Supplement B, Part 8

Observation: ASISTA thanks and commends USCIS for removing express reference to criminal history that was previously proposed in the language for this Part. ASISTA still believes the revised language is broader than appropriate, given the role of the certifier and their incomplete understanding of what is relevant to a U adjudication, and their limited window into the evidence USCIS will already possess or be provided by the petitioner.

Recommendations: ASISTA recommends striking the phrase, "and may be relevant for USCIS' adjudication," because it invites certifiers to step outside of their role and expertise in a way that is not necessary to USCIS's adjudication, and is not victim-centered. It should suffice for the question to call simply for "additional information you think is relevant to this certification." The certification topics are the only ones on which a certifier will have received education. They are also the only topics for which the certifier's perspective on the investigation merits giving their input "significant weight." *See* 72 Fed. Reg. at 53024 (supra) (describing the topics that should be

certified as those for which the "agency is in the best position to verify," and declaring information in a certification shall be given significant weight).

IX. Form I-918, Supplement B, and Form Instructions

Observation: It is ASISTA's observation that some certifiers delay returning signed forms to requestors by a month or more, frustrating the petitioner's ability to timely complete the rest of the petition packet within six months.

Recommendations: ASISTA recommends adding a warning or reminder in bold font directly underneath the signature box on the Form, about the signature's validity period. For instance, "Signature valid for six months only. Please transmit the signed form to the requestor promptly." A corresponding direction should be added in the Form I-918, Supplement B, Instructions on page 3, under "Best Practices for Preparing Form I-918, Supplement B." One way to do this would be to append Step 6 in the described process with, "Provide this promptly to the petitioner, because your signature will expire in six months."

X. Form I-918 Form Instructions

Observation: The Form Instructions do not clearly explain who counts as a "next friend," when it comes to a child or incapacitated survivor relying on a "parent, guardian, or next friend" to possess information about the crime or be helpful in the investigation or prosecution. Although the "next friend" topic is not currently part of suggested revisions, it is essential for properly implementing the more general instructions that *are* being revised, on evidence of possessing information, and evidence of helpfulness. Therefore we hope the agency will consider now to be an appropriate time to revise this "next friend" language as well, for the most comprehensive and accurate instructions on these subjects.

Recommendations: The current Instructions, at p. 14 of the proposed document, Items 6 and 7 (under General Requirements), suggest a "next friend" must be officially involved in court proceedings to stand in for a child/incapacitated victim for U visa purposes. *See* I-918 Instructions at 14 (restating the regulatory language that a "next friend" "appears in a lawsuit," but also adding that evidence of this would include "Court documents demonstrating recognition of an individual as the petitioner's next friend"). In fact, the case cited by regulators on the "next friend" definition

is not so limited and lays out a different test for whether a person is a "next friend." *Whitmore v. Arkansas*, 495 U.S. 149, 163–64 (1990) (cited at 72 Fed. Reg. at 53019). There are two elements to the test, which USCIS could and should seek evidence on through revised Instructions, instead of asking simply for court documents. The elements are: (1) an "adequate explanation" as to "why the real party in interest cannot appear on his own behalf to prosecute the action," and (2) whether the purported next friend is "truly dedicated to the best interests of the person" for whom they are appearing. *Id*. at 163. There is no element for participation in a proceeding before a court, in particular, even though most examples of "next friend" arise in that context. The Instructions should adhere to this test and suggest evidence that could satisfy the elements, such as documentation of "some significant relationship" with the incapacitated person or child, or other evidence documenting more than a "generalized interest in [criminal justice]." They should clarify that, for U application purposes, the "lawsuit" at issue may refer to the proceeding in which the victimization was brought to the attention of the investigator/prosecutor/judge, even if it did not actually reach the point of either being brought to criminal court or the next friend appearing in the court officially as a designated "next friend."

To do otherwise and leave the Instructions to indicate that a case for a young or incompetent person must reach prosecution, with a particular court finding about a next friend, would be to erect a barrier for these unusually vulnerable victims that does not exist for the less vulnerable. Namely, why must such a vulnerable victim be able to proceed only if their parent or guardian happens to have information about the crime, or if they happen to have been victimized in a way prosecutors choose to pursue in court, when those circumstances are beyond their control and no other victims' eligibility is limited to such circumstantial accidents? This runs counter to a key purpose of the statute, which was to protect vulnerable populations from crime and incentivize/reward cooperation throughout multiple levels of investigation, not just court. Moreover, making the instructions explicit on this point would be consistent with how the AAO appears to interpret the "next friend" statute and regulation. *See, e.g., Matter of* ___ (AAO, Sep. 23, 2010) (unpublished) (suggesting, by not rejecting claim out of hand, that a sibling could be a "next friend" if she acted on the incapacitated victim's behalf in contexts like school and caregiving, without requiring any formal appearance in a lawsuit or court).

XI. Conclusion

ASISTA appreciates USCIS's efforts to make the suite of Forms and Instructions related to the I-918 U visa petition process both accurate and effective. We respectfully suggest that the increased clarity to the Form and Instructions as recommended above will further those efforts and lead to higher quality U visa applications. The improvements will benefit both the noncitizen survivors who Congress intended to help access U nonimmigrant protections, as well as the USCIS officers who evaluate their cases.

Respectfully submitted,

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Senior Staff Attorney
ASISTA

PUBLIC SUBMISSION

Comment Submitted by Emma Secret

Posted by the **U.S. Citizenship and Immigration Services** on May 17, 2024

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I commend the following changes: (1) Removing questions about spouses/children, voluntary departure, membership to the Nazi and Communist party. (2) Combining questions that ask about certain grounds of inadmissibility. (3) Removing contact info for interpreter/preparer. (4) The addition of “indirect” victim to the I-918B instructions. (5) Removing signature for derivatives abroad.

Suggestions:

1. Remove Question 5, Part 4 (I-918B) about culpability. The topic of culpability is already in the DHS Law Enforcement Guide. The DHS guide was created with the sole purpose of aiding law enforcement. By adding this, you’re opening the doors for more certifying officials to use it as an excuse to not certify. Where I practice, many LEAs are reluctant to certify. Some believe that being a victim should not be a pathway to citizenship. Others think that in a DV cases if the victim is arrested, even with a dismissed case, they shouldn’t get a U Visa. Adding this question is unnecessary and goes against the whole point of the U Visa, which is to encourage victims to actually be helpful.

2. Format the I-918B better. Less blank space.

3. Reason 1 why Form I-918B should not be sealed: If USCIS has any doubt regarding the validity of a certification, they can contact the certifying official or agency directly. There is no regulation that says this should be sealed.

4. Reason 2 why Form I-918B should not be sealed: If Form I-918B has police reports included with Form I-918B, the petitioner has no way to review what the report includes. Many petitioners don't trust law enforcement of had a bad interaction with them during the incident in question. I work with DV victims and they are often accused, by their abusers, of being the aggressor. Too often, both the victim and perpetrator are arrested. An incident report can include biased information or uncorroborated allegations from an abuser about a victim that doesn't need to be included in the U Visa. If this is sealed, the victim has no ability to refute uncorroborated information. Plus, it's hard to get police reports.

5. Reason 3 why Form I-918B should not be sealed: Errors lead to rejected applications. Over the 10 years I've been practicing I have seen every error there is on Form I-918B. These include the wrong DOB, wrong name, wrong statute, unchecked boxes, photocopies signatures, lack of signature, etc. The only way I was able to have these errors corrected by the certifies was because I had the ability to see the certification. If Form I-918B is sealed there is no way to know if the information included is accurate. Also, there's nothing in the instructions that state the certifiers must provide the petitioner with a copy. That is extremely problematic.

6. Reason 3 why Form I-918B should not be sealed: Burdensome to certifiers. USCIS should not add more work to certifying officials. While it may not seem like a lot to seal a certification, it is. It's an extra step, it's more cost to them to use the envelopes, it's easy to forget and then petitioners will need to come back so it's sealed.

7. Form I-918B should not be longer. It's burdensome and could cause delays to the already long process.

8. Question 4 on Part 2 of I-918B is unnecessary and burdensome. If USCIS is going to require certifying officials to register, this needs to be known by all agencies and practitioners. Also, in many offices the certifiers often change and it's unnecessary to add more work to the already overworked certifying official. Moreover, if you are going to require this, make it easy. Put the steps on how to register right below the question. Or, an even better option, when USCIS gets Form I-918B and enters the data in the system, USCIS could send an automatic email to the certifying official that says, USCIS received Form I-918B stating you are a certifying official. Please confirm. If USCIS wants this information, they could easily make the request from the information the certifier provides on the form.

9. I-918 Instructions: The placement of the "Note: Submit primary evidence…" and then discusses affidavits" should be moved lower. Its placement looks like it's required you submit these affidavits.

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HER JUSTICE
Shift the Power

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Submitted via www.regulations.gov

RE: "Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition For U Nonimmigrant Status"
OMB Control Number 1615-0104; Docket ID USCIS-2010-0004

Dear Ms. Deshommes:

Her Justice is a non-profit organization that, since its founding in 1993, has been dedicated to standing with women living in poverty in New York City by recruiting and mentoring volunteer lawyers to provide free legal help to address individual and systemic legal barriers. Our immigration program works directly with undocumented immigrants to provide a path to lawful immigration status. We work primarily with survivors of domestic and sexual violence, those affected by human trafficking and/or children who have suffered abuse, abandonment or neglect. We represent in-house clients and mentor pro bono attorneys in their representation of clients for VAWA Self-Petitions, Petitions for U Nonimmigrant Status, Applications to Adjust Status, Waivers of the Joint Petition to Remove Conditions on Residence, Applications for Naturalization, Applications for T Nonimmigrant Status, and Applications for Employment Authorization. Along with our efforts to provide legal services to individuals, we engage in policy reform and advocacy to reform the immigration system so that the greatest number of immigrant women are able to obtain and preserve the best possible status, through a process that prioritizes their safety and dignity.

We reiterate our comments previously submitted in coalition with other organizations serving immigrant survivors on January 8, 2024 urging USCIS to adopt changes to protect noncitizen survivors of crime and gender based violence and remove burdens on applicants and law enforcement certifiers.

We submit further comments to specifically address the following proposed revisions to the Forms and Instructions pertaining to I-918, I-918A, and I-918B.

I. Form I-918B Instructions, Page 3: General Instructions – Suggested Best Practice of Law Enforcement Certifier Submission of Signed Form I-918B in Sealed Envelope

While we commend USCIS for providing additional guidance to law enforcement certifiers, the suggested best practice of having certifiers submit a signed Form I-918B in a sealed envelope is

burdensome to the law enforcement agency and has the potential to harm applicants. As worded, the I-918B instructions do not mandate law enforcement certifiers to provide applicants with a copy of their signed I-918B form. Rather, the instructions state that a copy of the signed I-918B form should be given to applicants as a suggested best practice.

Where an applicant receives only a sealed envelope containing a signed I-918B form and no courtesy copy, there is no way for the applicant or their legal representative to know the relevant date of expiration of the signed Form I-918B nor the actual qualifying criminal activity upon which the applicant's petition is based absent additional communication with the law enforcement certifier. The additional time and effort required to obtain a courtesy copy from the law enforcement certifier is burdensome to both applicants and certifiers, especially given the limited six-month validity of the Form I-918B once signed by the certifier. Although USCIS suggests providing courtesy copies to applicants as a best practice, law enforcement certifiers are not required to do so. Should certifiers fail to provide an applicant with a courtesy copy, the result can be prejudicial to applicants and create additional obstacles for the victimized applicant to overcome.

The processing times for Forms I-918B vary greatly by jurisdiction and law enforcement agency. In New York City, the average processing time for Forms I-918B can range from 30 days to over 9 months, depending on certifier and the resources of the certifying agency. Processing times can be lengthy based upon the workload of the certifier, and asking certifiers to place signed Forms I-918B in a sealed envelope and provide a courtesy copy to the applicant will only increase Form I-918B processing times. What may seem like a small ask may, given the volume of requests for I-918B forms in populous regions like New York City, contribute to certifier burnout to the detriment of both law enforcement and applicant.

Thus, we feel that it is in the best interest of law enforcement and applicants to remove the language referring to submitting signed I-918B forms in a sealed envelope entirely.

A. <u>Form I-918 and I-918A Instructions, Pages 4 and 12: Specific Instructions for Form I-918 and General Requirements, Required Initial Evidence to Support Form I-918 – Form I-918B in Sealed Envelope</u>

Under the Specific Instructions for Form I-918 section on Page 4 of the Form I-918 and I-918A Instructions, the proposed revisions to the second paragraph states: "The Form I-918, Supplement B, should be submitted to USCIS in an envelope sealed by the certifying agency. We urge USCIS to remove this sentence entirely.

Under the General Requirements section discussing Required Initial Evidence to Support Form I-918 on Page 12 of the Form I-918 and I-918A Instructions, Item 1. Form I-918, Supplement B, contains the following sentence under the proposed revisions: "The Form I-918, Supplement B, should be properly sealed by the certifying agency." We urge USCIS to remove this sentence entirely.

II. Form I-918B Instructions, Page 4: Specific Instructions – Designation Letters

The proposed revisions on Page 4 of the I-918B instructions puts the onus on certifiers to submit designation letters directly to USCIS. However, it is unclear what the consequence is to an applicant should a certifier fail to submit their designation letter to USCIS and whether USCIS or the applicant will bear the burden of following up with the certifier to provide the necessary letter.

An applicant has no control over a certifier's actions or inactions. If a certifier fails to submit a designation letter to USCIS, will the applicant be denied a *bona fide* determination? If the applicant is to be given a chance to "cure the defect," must the applicant then request that the certifier submit a designation letter to USCIS when it is the certifier's responsibility to do so? If the certifier wholly fails to submit a designation letter, does the applicant then get penalized for the certifier's non-cooperation?

This requirement unnecessarily complicates I-918 and I-918B processing, which will result in delays or denials that will prejudice applicants who are already facing an adjudication period of over five years. Thus, we propose that the existing instructions under the "Specific Instructions" section on Page 4 be changed as follows: (changes noted in bold)

> *Item Number 4. Indicate whether your name and signature have already been provided to USCIS as a designated certifying official. USCIS maintains records of the heads of certifying agencies and their designated certifying officials. If your name and signature have not already been provided to USCIS,* ***or if you are unsure, you may*** *provide your name to USCIS by emailing a copy of a signed letter from the head of your agency delegating certifying authority to LawEnforcementUTVAWA.VSC@USCIS.dhs.gov* ***or attaching a designation letter to your signed Form I-918, Supplement B.***

We also suggest sending designation letter to USCIS as a best practice under the "General Instructions" section: "Best Practices for Preparing Form I-918, Supplement B." Suggested language is as follows:

> *USCIS strongly suggests that law enforcement agencies submit the names of designated certifying officials directly to USCIS by emailing a copy of a signed letter from the head of your agency delegating certifying authority to LawEnforcementUTVAWA.VSC@USCIS.dhs.gov or attaching a designation letter to your signed Form I-918, Supplement B.*

III. I-918B Instructions, Page 4: Specific Instructions, Item Numbers 2 & 4 – Specific Details of Crime & Explanation of Nature and Elements of Crime

The proposed revisions instruct certifiers to provide specific details of the qualifying crime, including events leading up to the crime, what happened during the crime, and the perpetrator's actions and motives (if known), as well as listing and providing a detailed explanation of the nature and elements of the crime that are substantially similar to the enumerated crimes if, for example, a state does not have a "felonious assault" crime. This requirement adds additional, unnecessary work to certifier workloads contributing to law enforcement burnout and increased I-918B processing times, discourages law enforcement agencies from issuing I-918B forms, and requires certifiers to engage in legal analysis that they may or may not be trained to do.

The requirement for law enforcement certification of form I-918B is that the applicant has been helpful to law enforcement in "detecting, investigating, prosecuting, convicting or sentencing" the qualifying crime. As front-line law enforcement, police officers are generally responsible for detecting and investigating criminal activity. Police officers conduct a low-level legal assessment to determine whether the perpetrator's conduct appears to have violated a criminal statute. Whether or not the perpetrator's conduct is further investigated and prosecuted is generally up to the district attorney or prosecutor's office which engages in a high-level legal analysis to determine whether the perpetrator's conduct meets the statutory elements under the state's statute.

While a law enforcement agent such as a prosecutor is likely to be able to provide "specific details" of the crime, as well as a detailed explanation of the "nature and elements" of the crime that are substantially similar to the enumerated crimes, another law enforcement agency engaging in the detection or investigation of a crime is likely not in a position to provide this level of information or analysis. Requiring all law enforcement certifiers to provide this type of information forces all certifiers to engage in high-level legal analysis without any guidance, and to conduct the analysis that trained USCIS adjudicators should be doing. Given widely varying state laws and large variety of law enforcement agencies, certifiers in the same jurisdiction may have varied explanations and interpretations of whether a crime is substantially similar to an enumerated crime. This defeats the purpose and intent of the U nonimmigrant status statute.

Thus, we strongly urge USCIS to remove this language and requirement from the I-918B instructions and the form itself given the added burden to certifiers and the potentially unjust effect to applicants where certifiers in the same jurisdiction may provide varied explanations that can greatly impact an adjudicator's decision.

IV. Form I-918 and I-918A Instructions, Page 14: General Requirements, Required Initial Evidence to Support Form I-918 – Item 7. Evidence of Helpfulness

We commend USCIS for outlining factors the agency considers in determining whether the victim is, has been, or will be helpful in the proposed revisions. However, as many I-918 victim applicants do not speak English as their primary language, we urge USCIS to also consider adding "English proficiency" and "education level" to the individual circumstances listed under Item 7.D.

V. Conclusion

We urge USCIS to consider these suggestions and amend the proposed revisions to Forms I-918, I-918A, and I-918B. We are appreciative of the positive changes proposed and encourage USCIS to maintain those changes while also addressing the concerns we have raised on the proposed forms. Please don't hesitate to contact us if there are any questions at

Sincerely,

/s/ *Susanna Saul*
Susanna Saul, Esq.
Director, Immigration Practice
Her Justice

/s/ *Rachel Braunstein*
Rachel Braunstein, Esq.
Director, Policy
Her Justice

Formerly known as Friends of Farmworkers

May 17, 2024

Samantha Deshommes
Chief, Regulatory Coordinator Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Submitted via www.regulations.gov

Re: Comment in response to DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status; OMB Control Number 1615-0104 Docket ID: USCIS-2010-0004

Justice at Work Pennsylvania ("Justice at Work PA" or "JaW") respectfully submits the following comments on the Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, published on April 17, 2024. We appreciate this opportunity to provide comments.

Justice at Work PA, formerly Friends of Farmworkers, has served and advocated for low-wage workers across Pennsylvania for nearly 50 years. We provide free immigration and employment legal services to low-wage workers as they pursue economic and social justice. We also provide community education, and we advocate for just immigration and employment policies at a local, state, and national level. Justice at Work PA regularly represents victims of crimes in the workplace in applications for U Nonimmigrant Status. Most commonly, these workplace crimes are related to sexual harassment and assault. We also represent victims of witness tampering, obstruction of justice, assault and other qualifying crimes. We advocate for immigrant crime victims with law enforcement agencies at the local, state and federal level when seeking U certifications. It is in light of this experience and expertise that we submit the following comments.

I. Justice at Work Pennsylvania commends USCIS for positive changes made to Forms I-918, I-918 Supplement A, and I-918 Supplement B

A. Changes in response to previously submitted comments

Justice at Work PA commends USCIS for making changes to Form I-918, Form I-918A and Form I-918B in response to previously submitted comments, as detailed in the document titled, "Form I-918-012 Revision – Response to 60-day FRN Public Comments." We applaud USCIS's willingness to accept suggestions made by expert immigration attorneys and organizations who

have direct contact with clients and experience completing these forms. The forms in their current iteration are clearer and less burdensome as a result of USCIS's receptiveness to this feedback.

B. Shorter length for Form I-918 and Form I-918A

Justice at Work PA commends USCIS for reducing the length of both Forms I-918 and I-918 Supplement A. Shortening the length of these forms increases efficiency for the applicant, the applicant's legal representative (in the case of represented applicants), and USCIS. Importantly, this change lessens the burden on pro se applicants, who have suffered serious harm and who benefit from having to answer fewer questions.

C. Guidance regarding safe mailing address

We also commend USCIS for adding guidance to Form I-918 regarding a safe address for the applicant. We encourage USCIS to include similar guidance on all forms used by immigrant survivors, including Form I-485, Application to Register Permanent Residence or Adjust Status.

D. Streamlining Sections of Form I-918, Form I-918A and Form I-918B

We also commend USCIS for streamlining sections of these forms, which makes the form less intimidating and burdensome for immigrant survivors. These changes include:

- Combining the foreign and domestic address sections;
- Adding clarifying questions regarding whether applicants have a valid passport or travel document, and whether they have a Form I-94;
- Removing mailing addresses for interpreters and preparers;
- Removing unnecessary and potentially confusing questions regarding voluntary departure;
- Combining questions about uncommon grounds of inadmissibility (e.g. prostitution, gambling, bootlegging, and child pornography), and removing other uncommon grounds (e.g. communicable disease, polygamy, stowaway, use of biologic agent, and aiding terrorism); **NOTE: we encourage you to also eliminate the uncommon ground of 274C final orders and civil penalties;**
- Removing questions regarding membership in a Communist Party or Nazi Party;
- Removing unnecessary questions from Form I-918A, including about spouse and children, and about having a physical or mental disorder;
- Changing the order of the first questions on Form I-918B so that the applicant's name is first and not their A#, which is a more user-friendly order for certifiers;
- Changing the language in new Question 3 in Part 4 on Form I-918B to check the category under which the qualifying criminal activity "appears" to fall;
- Adding new Question 4 in Part 4 on Form I-918B that gives agencies the space to explain how the criminal activity is similar to the categories noted in the list of qualifying crimes, with the example of felonious assault given; and
- The addition of language clarifying that USCIS (not the certifying agency) is solely responsible for determining whether the crime is a "qualifying criminal activity" for purposes of U eligibility on Form I-918B

E. Gender Inclusive Options and Language

We appreciate USCIS's making revisions to forms to expand gender inclusivity by listing the option of "Another Gender Identity." We encourage USCIS to make this change to all immigration benefit forms. Similarly, we commend the gender-neutral use of "qualifying family member" as opposed to "he or she."

II. Justice at Work urges USCIS to further improve Forms I-918 and I-918 Supplement A

While we appreciate the aforementioned positive changes USCIS has made to Form I-918 and Form I-918A, we suggest the following additional changes to streamline the forms and reduce barriers to U nonimmigrant status.

First, we suggest that USCIS share the reasoning behind any significant changes the agency is making to immigration forms. It is important that stakeholders understand how additional information collected on these forms will be used by USCIS. For example, Form I-918B contains extensive content changes to both the form and instructions. These changes will likely affect certifier policies and relationships between certifiers, service providers, and immigrant survivors themselves, all of which are crucial to implementation of the U visa program. We respond to the specific proposed changes below, but we recommend that USCIS provide reasoning for changes that significantly affect immigrant survivors' access to U visa status.

A. Part 4, Victim's Personal Statement (I-918):

While we believe the provision of space for a victim's personal statement on Form I-918 will increase accessibility for *pro se* applicants, we urge USCIS to add language in the form instructions and on the form itself warning applicants about the risks of using un-licensed attorneys or un-accredited representatives, particularly if they answer yes to any of the inadmissibility questions contained in Part 2.

A complex analysis is often required to demonstrate that an applicant's experience and circumstances meet the requirements of the U visa, and to identify and waive grounds of inadmissibility. Such complex analysis requires competent counsel. Perhaps most importantly, failure to correctly identify inadmissibility grounds may result in incomplete waivers, which can create difficulties for U visa beneficiaries at the time of adjustment of status or naturalization, and can even result in loss of status.

In Justice at Work PA's experience, immigrants are often unfamiliar with their rights as a client of an attorney. There unfortunately are many bad actors who take advantage of this unawareness: attorneys who practice unethically, un-licensed and un-accredited representatives unlawfully practicing immigration law, and notaries ("notarios") pretending to be immigration attorneys. When these bad actors file incomplete, inaccurate, or fraudulent applications for their clients, the potential harm is enormous: the cost of services, bars to status, or even removal proceedings. USCIS should use the form instructions and forms themselves to issue warnings to applicants about the risks of using un-licensed attorneys or un-accredited representatives.

While we appreciate USCIS's response to other organizations' similar comments – that USCIS has information on its website to help prevent individuals becoming victims of scams – we believe such information should be available on the forms and/or form instructions, as applicants are much more likely to be reading the forms and instructions, rather than proactively seeking out a USCIS webpage without any prompting.

B. Part 2 (I-918); Part 5 (I-918A), Chart of Entries and Exits Since April 1, 1997:

We agree that it could be helpful to identify entry-related inadmissibilities at the time of the initial U and U derivative visa petitions, and a chart of entries and exits is indeed an efficient format to collect relevant information. Still, USCIS should rely on records accessed by biometrics information to assess a U petitioner's inadmissibility, when possible. In addition, if incorrect or conflicting information is provided in this space, especially by *pro se* applicants, USCIS should not conclude that conflicting information provided by an applicant petitioner is due to intentional misrepresentation or a lack of credibility, and USCIS should not deny otherwise eligible petitions.

We acknowledge USCIS's response to similar comments, which states that USCIS assesses each petition based on the totality of the evidence, including biometrics results, however this response does not address the concern that conflicting information unintentionally provided by an applicant might be used against them.

Many, if not most, survivors of crime (i.e. U-visa-eligible applicants) have experienced trauma that affects their memory, especially when it comes to details such as dates. The vast majority of Justice at Work's clients have experienced trauma, often times complex trauma, and recalling dates and travel history can be extremely difficult for these clients. USCIS should not punish applicants for faulty memory caused by trauma.

In addition, this chart of entries renders Question 4 in Part 2 unnecessary and redundant. Question 4 asks if the applicant has ever departed the United States after having been ordered excluded, deported, or removed. This question is unnecessary as, on the same page, applicants are required to fill out a chart with all entries and manners of entries.

C. USCIS should remove questions and use caution in interpreting answers to questions that ask applicants to draw legal conclusions.

USCIS should revise the section, "Criminal Acts and Violations" on pages 3-5 of Form I-918 such that applicants are not required to draw legal conclusions. Revisions should include changing the introductory language of the section, as well as eliminating Question 6 in Part 2 entirely. In addition, USCIS should use caution in interpreting answers to these many questions that require legal conclusions; should not misinterpret inaccuracies or contradictions as fraud or misrepresentation; and should not deny otherwise eligible petitions.

First, USCIS should clarify in this section that traffic citations do not need to be included. We see – as USCIS points out in its response to comments – that the "Form I-918 instructions state that petitioners do not need to submit documentation relating to traffic fines and incidents that did not involve an actual physical arrest…" Still, we believe this deserves mention on the form itself to minimize applicants' confusion. Traffic citations are a common and minor offense. However, we have observed that, because these citations involve interactions with law enforcement, Justice at Work clients often misunderstand these offenses to be criminal. Generally, overly broad questions run the risk that applicants – especially *pro se* applicants –will unintentionally submit erroneous information, necessitating RFEs that slow down adjudication.

Regarding Question 6 in Part 2, asking applicants if they have committed a crime for which they were not "arrested, cited, charged with, tried for that crime, or convicted," requires applicants to draw legal conclusions. USCIS states in its response to comments that this question "does not require the applicant to draw legal conclusions but rather include factual information about their criminal history." Justice at Work disagrees. In order to answer this question, an applicant must understand local, state, and federal penal codes everywhere they have lived and draw legal conclusions as to whether their actions constitute criminal activity. Moreover, activity constituting a crime in the United States may not constitute a crime in the applicant's country of origin, and vice versa. The broadness of Question 6 also runs the risk that an applicant will unintentionally omit relevant information, which could lead to a finding of fraud during adjudication or at the later adjustment or naturalization stages. Questions like this disadvantage *pro se* applicants in particular, as the questions require legal expertise.

We would like to underline how complex and often confusing the criminal justice system can be, especially to immigrant survivors who have likely experienced trauma and/or are unfamiliar with – and ill-equipped to navigate – United States criminal law. Oftentimes, Justice at Work clients are unaware of the status of their criminal case or whether such a case even exists. Justice at Work must search criminal dockets or obtain final dispositions in order to fully assess a client's criminal history and properly answer the "Criminal Acts and Violations" questions on Form I-918. USCIS cannot expect *pro se* applicants to navigate the criminal justice system and draw accurate legal conclusions about their criminal histories and inadmissibilities.

Similarly, regarding the question, "Have you EVER falsely claimed to be a U.S. citizen (in writing or in any other way)?", applicants – and especially *pro se* applicants – may not always be aware of instances in which they have made a false claim to citizenship. For example, recently the Pennsylvania of Transportation (PennDOT) added an essentially automatic voter registration process when a person receives a PennDOT product; non-citizen immigrant applicants for PennDOT products must actively opt out of this registration. While we agree that it could be helpful to identify this inadmissibility ground at the time of the initial U visa petition, we urge USCIS not to use any incorrect information, especially reported by *pro se* applicants, to allege misrepresentation or deny otherwise eligible petitions. USCIS states in its response to comments that "petitioners are provided an opportunity to include additional information in the Additional Information section if they are unsure if the facts in their case amount to a false claim." However, if an applicant does not understand whether or not they have made a false claim to citizenship, they will not know to explain or elaborate in this "Additional Information" section.

D. USCIS should process U visa applications more rapidly

Many applicants cannot afford private counsel, and pro- or low-bono representatives are often at capacity, unable to take on new cases. To better address these challenges, USCIS should increase its efforts to process U visa petitions more rapidly. The creation of the bona fide determination (BFD) was a positive change, however immigration legal service providers continue to report long delays in even acquiring BFD for their clients.

III. Justice at Work Pennsylvania urges USCIS to further improve Form I-918 Supplement B and its instructions

Justice at Work PA underscores the centrality of Form I-918B in the U visa application process. Without this signed certification of helpfulness there cannot *be* a U visa application process. Immigrant survivors of crime depend on the discretion of law enforcement agencies (LEAs) to sign certifications. Their applications also hinge of the patience of the LEA to follow instructions, correctly fill forms, and understand the basic tenets of U visa relief. Advocates for immigrant survivors have spent more than a decade developing relationships with certifiers and collaborating with them to develop certification policies. Nevertheless, misinformation and ignorance about the U visa program and certification processes persist, as does the need for trauma-informed and accessible engagement with immigrant survivors by law enforcement actors.

For these reasons, we oppose several of the additions to the Form I-918B and accompanying instructions, on the grounds that they add unnecessary bulk and inefficiency to the form and certifying process, fail to address long-standing barriers to certification by LEAs, and invite the certifying agency to provide negative and extraneous information that may cause further injury to immigrant survivors. Moreover, we recommend that changes to the Form I-918B include instructions about language access and trauma-informed approaches to working with immigrant victims, along with more prominent prohibitions on disclosure.

A. The expanded length of the I-918B form is counter to the goals of the U visa program and may introduce further confusion and inefficiency to the certification process:

The proposed revisions to Form I-918B lengthen the form by two pages, and provide more space for certifiers to write about the immigrant survivor's culpability for the crime of which they are a victim, their injury, their degree of helpfulness, and unspecified negative information about the victim. These expanded questions, which speak to a petitioner's eligibility for and deservingness of the U visa, exceed the scope of certifiers' role in the U visa program. The form's expanded length and more onerous questions will increase the amount of time certifiers need to complete the form, which in turn will delay and impede the certification process. This added inefficiency will create further barriers for immigrant survivors of crime, and particularly for unrepresented petitioners, to access U nonimmigrant status.

One way in which the agency can increase efficiency and reduce barriers is by eliminating the new Part 5, "Known or Documented Injury to the Victim." The additional questions regarding

medical attention and injuries are likely to be only partially known, at best, by the certifier. The certifier is told to answer the question based on the interaction with the applicant, which may have been limited in scope and duration. Details on the medical attention and injuries suffered should be left to the applicant who can submit their medical records, evidence of treatment, etc.

We suggest other places where USCIS can streamline the form in the following sections.

B. The addition of "Best Practices for Preparing Form I-918, Supplement B" creates an additional burden for certifying agencies and victims.

USCIS' suggestion that I-918Bs should be sealed when submitted by petitioners creates an unnecessary possibility of confusion and delay for victims of crime. While JaW appreciates that this is not mandatory and that there are additional instructions to provide an unsealed copy to the petitioner, we are concerned about the functionality of this new practice. First, we are concerned that LEAs may decline to provide an unsealed copy of the supplement to the petitioner, leaving the petitioner without full knowledge of what crimes were certified and what additional information the LEA may have provided about them. This creates the possibility that LEAs may provide derogatory information in a police report or on Form I-918B. The petitioner is then unable to address that unknown information in other parts of the I-918 application, and USCIS may deny the U Visa based on that derogatory information.

Second, the petitioner's declaration and certification on Form I-918 states, "I certify, under penalty of perjury, that all of the information in my petition and any document submitted with it were provided and authorized by me, that I reviewed and understand all the information contained in, and submitted with, my petition, and all of this information is complete, true, and correct." This certification is undermined if the Form I-918B is sealed and petitioners cannot review the submission before submission.

Finally, as mentioned above, LEAs may perceive any additional steps as a burden and will be less likely to certify qualifying crimes. Creating a more burdensome process is contrary to the purposes of the U Visa and will deny immigrant victims of qualifying crimes the opportunity to seek U Nonimmigrant Status with USCIS.

C. The I-918B's contents should reflect the breadth of certifying agencies

Justice at Work PA applauds the proposed I-918B instructions' inclusion of examples of certifying agencies such as child protective services, the EEOC and the Department of Labor. Emphasizing that these and other agencies are also law enforcement agencies with the responsibility to investigate of qualifying criminal activities will aid immigrant victims and their advocates in obtaining U visa certifications for crimes less commonly investigated and prosecuted by police and district attorneys.

However, the form later solicits information that could confuse LEAs about their ability to certify. In Part 3, the revision to Question 2 adding the words "from Police Report (if any)" leaves no space for an agency investigating crimes without a police report, UCN or SID to provide a reference number for the underlying case. JaW regularly encounters current Form I-

918Bs signed by federal and state labor agencies that utilize the "Case Number" field for the investigation or charge number. If USCIS only requires these fields to be completed in cases where there is a police report, a FBI UCN or a SID, USCIS should clarify this in the form so that certifying agencies are not confused. Alternatively, USCIS could remove the "from Police Report (if any)" language or add an additional "Other Case Identifier" field.

D. Additional questions and instructions do not address systemic barriers to the U Visa program

Justice at Work PA has encountered LEAs with anti-immigrant animus, disinterest in understanding qualifying crimes that may form the basis of a U visa, and unwillingness to provide language access. While USCIS has found additional room in the forms and instructions for language about immigrant fraud, space for law enforcement to expound upon the helpfulness of the victim, and a space for "any additional information," we are disappointed to see that the agency did not insert any guidance on the importance of language access and its role in a limited English proficient individual's ability to participate in the investigation on an ongoing basis.

We strongly agree with our colleagues who suggest adding the following language directly into Part 6 of the form:

> **When determining whether the victim was helpful, please take into account the victim's ability to communicate with the certifier agency in their primary language at any point in the detection, investigation, or prosecution of the qualifying criminal activity and if domestic violence or the experience of trauma may have inhibited their participation. Note that assistance with the detection, investigation, or prosecution of an offense makes certification appropriate at any point in time.**

Space for this new instruction could be created by eliminating the space given in Question 2, Part 6 to explain how the petitioner was helpful. If the certifier checks that the petitioner was helpful, that should be sufficient. USCIS should not second-guess the certifier's assessment by asking for a detailed description that will burden the certifier.

E. Provision on disclosure of information should be added to the Form I-918B:

The proposed revision also includes on Page 8 of the instructions a prohibition on disclosure of information under 8 U.S.C. § 1367 and 8 C.F.R. 214.14(c) to anyone other than an official of DHS, DOJ, or DOS. **We applaud the inclusion of this language in the instructions, but we recommend instead that it be inserted directly onto the form just above the signature line of the certification**, to better alert certifiers of these special protections for immigrant survivors**.**

Justice at Work commends DHS for undertaking this revision process and thanks it in advance for its considerations of our comments and suggestions.

Sincerely,

/s/Kate Berson
Senior DOJ Accredited Representative
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/s/Lerae Kroon
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JUSTICE CENTER OF SOUTHEAST MASSACHUSETTS LLC

Subsidiary of South Coastal Counties Legal Services, Inc.
Serving Southeastern Massachusetts, Cape Cod & Islands

Submitted via regulations.gov

Samantha L. Deshommes,
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: DEPARTMENT OF HOMELAND SECURITY; U.S. Citizenship and Immigration Services; Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status
OMB Control Number 1615–0104
Docket ID USCIS-2010-0004

To Whom It May Concern:

We are writing on behalf of the Justice Center of Southeast Massachusetts in response to the request for public input published by the Department of Homeland Security ("DHS") and the U.S. Citizenship and Immigration Services ("USCIS") regarding revisions to the Petition for U Nonimmigrant Status, published in the Federal Register on April 17, 2024.

The Justice Center of Southeast Massachusetts, a subsidiary of South Coastal Counties Legal Services, provides free civil legal services to indigent and elderly individuals in our service area comprised of Plymouth, Bristol, Barnstable, Dukes and Nantucket Counties, and the towns of Stoughton and Avon. The immigration unit at the Justice Center services the entire region and is the only legal services provider located in Plymouth County, and one of only a handful of legal services providers in Bristol, Barnstable, Dukes and Nantucket Counties. Over the last few years, the unit has grown substantially as the demand for immigration legal services has continued to rise. During a typical year, our organization works on between 750-1000 new or pending cases and additionally conducts outreach and education events with immigrant communities in our region. In addition to the individuals that our office directly represents, we submit our comments on behalf of the thousands of unrepresented individuals and families that navigate USCIS without the assistance of qualified counsel. Our region boasts a large population of noncitizens and has many established diaspora communities that utilize USCIS services with and without assistance of counsel.

I. The Proposed Changes Do Not Align with a Victim-Centered Approach to U Visas

U Visas were created "to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of noncitizens and other crimes,

while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity."[1] The most recent proposed changes to Form I-918 and its supplements do not reflect the purpose that the visas were designed to serve. These changes are also contrary to ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, which is meant to "encourage victim cooperation with law enforcement, engender trust in ICE agents and officers, and bolster faith in the entire criminal justice and civil immigration systems" while "minimiz[ing] any chilling effect that civil immigration enforcement actions may have on the willingness and ability of noncitizen crime victims to contact law enforcement, participate in investigations and prosecutions, pursue justice, and seek benefits."[2] Many of the proposed changes to the form and instructions do not align with the goals of the U Visa to protect victims and the directive to encourage cooperation, bolster faith in LEAs and the criminal justice system and increase willingness of individuals to contact law enforcement and pursue justice. To the contrary, some of the proposed changes seem to cast suspicion on immigrant victims and their stories, which will exacerbate biases that already exist among many law enforcement officials and widen the chasm between immigrant communities and law enforcement.

a. Form I-918 Supplement B Part 4 Question 5: Culpability in Qualifying Criminal Activity

The current version of the I-918 Supplement B does not ask the certifying official any questions about a victim's culpability. The proposed instructions now add language which states that an individual is not eligible for a U Visa if they were culpable in the qualifying criminal activity. The instructions further direct the certifying official to "note their concerns" if they "suspect the individual is or may be culpable" of the activity being investigated or prosecuted. We believe that the addition of this section in the new proposed Supplement B is unnecessary and could be damaging to a victim's credibility.

This section asks the certifying official to make determinations about a victim's culpability in a crime in which they have been identified as the victim. This is problematic for several reasons. Firstly, it is very unlikely that a certifying official would be filling out I-918 Supplement B if they believe that a victim is culpable in the crime. Law enforcement agencies already have wide discretion in deciding whether or not to sign an I-918 Supplement B. It is highly improbably that an LEA would choose to fill out an I-918 Supplement B form when they held suspicions that the

[1] USCIS website, "Victims of Criminal Activity: U Nonimmigrant Status," https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status.
[2] ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, available at https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.

victim was involved in the criminal activity they are investigating, therefore, this section is unnecessary.

Secondly, the certifying official most likely does not have direct knowledge of the case and will only have limited information on which to base their determinations. This may include basing questions of culpability on documents such as police reports, which are prone to inaccuracies and biases. For example, we are working with a current client on a U visa case in which the police officer responding to the scene called a friend to interpret for the report. The friend did not properly interpret the statement of the victim. Fortunately, the victim realized that was the case and returned to the police department to correct the record, using her own interpreter. It was very fortunate that the client was empowered and resourceful enough to follow up with the police department and receive the protection that she needed. Examples like this highlight how complicated interactions with LEAs can be for survivors, who are also frequently non-English speakers. Even adding this section raises the idea that immigrant victims are somehow less credible. Casting further suspicion on their interactions with LEAs will not protect survivors and increase their participation with law enforcement investigations.

It is not appropriate for a certifying official to make determinations about culpability where those determinations may be based solely on uncorroborated allegations or suspicions. The language in the instructions explicitly encourage speculation as it asks the certifying official to discuss whether they "suspect" the victim is culpable in the crime. This language in the instructions should be removed.

This section also involves directing the certifying official to do an investigation of the victim, instead of focusing on investigating the crime. Certifying agencies have their own procedures by which to determine whether reports given to them are credible. Therefore, asking them to expand upon the culpability of a victim is not necessary. This question also fails to account for situations where the culpability of the victim of the crime is most likely linked directly to their victimization. For example, a victim of sex trafficking might also be prosecuted for prostitution, where their alleged criminal activity is directly related to their victimization.

b. Form I-918 Supplement B Part 6: Helpfulness of the Victim

The current Form I-918 Supplement B, part 4 questions 2-3, asks the certifying official to check 'yes' or 'no' regarding the helpfulness of the victim. There is then additional space to provide an explanation. The new proposed Supplement B also contains a section very similar to this. USCIS requires that a victim applicant "was, is, or is likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. This includes being helpful and providing assistance when reasonably requested." While we acknowledge that helpfulness is a requirement in order to be eligible for a U Visa, we suggest

adding language into the Supplement or the Instructions mentioning barriers that victims may face in being helpful. Certifiers should be aware that a victim may be limited in their capacity to assist for several reasons, even if they do want to be helpful. For example, many agencies do not have appropriate language access or trauma-informed training or resources to assist victims. Victims are required to respond to reasonable requests for assistance, but if agencies fail to have the proper resources to support victims, they should not be penalized. Adding language to the instructions and form advising LEAs of the barriers that victims may face may help them to provide more victim-centered services and assist them in the detection, investigation, and prosecution of crimes since victims who are properly supported will be better able to assist.

c. Form I-918 Supplement B Part 8: Supplemental Information

The table of proposed changes for the new Form I-918 Supplement B instructions includes a section for supplemental information. Item Number 1 allows certifiers to add additional information "you think is relevant to this Form I-918, Supplement B and may relevant for USCIS' adjudication (for example, related to arrest and criminal history)." We believe that this language is unnecessary and potentially harmful to victims. Victims are already required to disclose any criminal violations or acts directly to USCIS on Form I-918, therefore asking a certifier to comment on them is redundant. The inclusion of this language also suggests that the certifying official should weigh in on the credibility and worthiness of the victim to receive immigration benefits based on criminal activity. Having a certifying official speak to a victim's past criminal actions, instead of focusing on them as a victim of a crime, is contrary to the purpose of a U Visa.

Again, the addition of this section leaves room for certifying officials to remark on uncorroborated allegations based upon police reports and their own speculation, which is not a proper basis for USCIS to rely on when exercising discretion. Police reports are unreliable and are considered hearsay in federal criminal court, and they tend to be particularly prejudicial towards victims who are immigrants, frequently do not speak English or do not speak it fluently and are people of color. The language of this section encourages certifiers to comment on criminal acts that they may have no or limited direct knowledge of.

d. Form I-918 Supplement B Instructions

The proposed updated instructions for Supplement B use a lot of language about fraud and the culpability and criminality of the victim. While we acknowledge that there may be cases of fraud, the vast majority U visa applicants are victims of crimes who have lived through traumatic experiences. Including this kind of language in the instructions for certifying officials raises suspicion that applications are fraudulent and that immigrant victims are not credible. This is not in line with our experiences as legal services providers. Due to the new language, certifiers may

see immigrant victims through a more critical lens, rather than focusing on victims who are doing a public service by reporting and helping prosecute criminals. From our own work helping victims obtain U Visa certifications, we know that there are certifiers and law enforcement agencies that are already suspicious of, or critical of, the U visa process. The inclusion of this language may discourage certifiers from working with immigrant victims and exacerbate problems that exist between immigrant communities and law enforcement.

II. The changes to the instructions for Form I-918A increase burdens on victims of crime and would benefit from further clarification.
    a. Criminal information

The proposed changes ask victims to gather extensive criminal documentation for criminal activity that *did not result in convictions*. The new requirements ask for criminal documentation that is too expansive given that their purpose remains unclear, especially in cases where no criminal charges were even filed. USCIS should not require victims to submit such extensive records for any criminal charges, arrests, and convictions they may have. Criminal documents are often unreliable, highly prejudicial, and can be very difficult to obtain.

Countless court decisions and a wide body of research strongly support the notion that police reports are unreliable, and they are broadly recognized as such in the criminal legal system. Police reports are prone to implicit bias and are very often factually unsubstantiated, concerns which are exacerbated for immigrants many of whom face language access issues, have histories of trauma, and belong to over-policed communities. Adjudicators at USCIS should therefore not view police reports with a presumption of reliability. In cases where police reports are considered, the reports should be given limited weight. USCIS should not require certified police reports for all cases where a victim has criminal history.

The documentation requested by USCIS is burdensome to obtain and their contents would be of limited relevance to a victim's petition for U Nonimmigrant Status. While certified court records are commonly submitted with U visa petitions, it is time-intensive and extremely difficult to obtain other documents such as certified copies of arrest reports, formal charging documents, plea agreements, probation or parole records, juvenile records, and certificates explaining why documents are unavailable, if the victim cannot obtain them. Agencies may not have a process for providing victims with many of these types of records, and in some cases they may be unwilling to provide them. In Massachusetts, LEAs frequently refuse to provide documents related to crimes involving domestic violence and sexual assault, even to the victims themselves due to state privacy laws. Even where victims may be able to obtain records, there is frequently an associated cost. Considering that Form I-918 and all associated filings do not require a fee, it seems counter to the purpose of the U visa program for USCIS to require criminal documents which often come with additional monetary costs.

Moreover, USCIS's requirement of documentation for victims who may have had criminal charges, arrests, or convictions applies to incidents that occurred anywhere in the world; it is already impractical for USCIS to expect victims to obtain these documents in the United States. As discussed above, it is particularly difficult to obtain certified police records in cases involving domestic violence and sexual assault, and juvenile records are also subject to state privacy protections.

Victims should especially not be required to submit juvenile records. Although USCIS reserves the right to request a wide range of evidence for purposes of discretion, the submission of juvenile records would require a petitioner to make a legal determination regarding the adjudication of their juvenile case. The instructions state: "If you claim that an arrest resulted in adjudication of delinquency, and not in a conviction, you should submit a copy of the court document that establishes this fact." Victims should not be responsible for making such a determination. Further, adjudications of juvenile delinquency do not have bearing on a victim's admissibility and should therefore not be considered by USCIS, even as a matter of discretion.

Overall, the expansive request for criminal records is unreasonable and unduly burdensome on victims. It asks them to obtain documents that may be unobtainable and costly for purposes that have not been sufficiently explained.

b. Victim Personal Statement

To reduce confusion, the instructions for Part 4. Victim Personal Statement should clarify that the victims is not required submit a statement separate from any statement provided on Form I-918A. The instructions indicate that the statement may be attached, and that Part 9. Additional Information for Victim Personal Statement may be used. The instructions should explicitly establish that the statement need not be separate from the form.

USCIS should add qualifying language to Page 12 Item 2C regarding the specific details that victims are asked to provide in their personal statement. The instructions should state, "Who was responsible for the qualifying criminal activity, if known." There will be instances in which the perpetrator of the criminal activity is unknown to the victim.

USCIS should also clarify or eliminate the requirement that a victim provide detail regarding "How the qualifying criminal activity came to be detected, investigated, or prosecuted" on Page 12 Item 2E. Many victims are unlikely to have knowledge of such processes – factors such as trauma history, education level, and lack of language access often prevent victims from having a sufficient understanding of these processes to be able to accurately describe them. Further, it should not be the responsibility of the victim to describe the procedures and decisions of law enforcement agencies in the detection, investigation, and prosecution of the qualifying criminal activity. Thus, this requirement unduly increases the burden on victims of crime.

c. Evidentiary standards

The evidentiary standard and burden of proof for U Nonimmigrant Status states that "The petitioner may submit any credible evidence relating to his or her Form I–918 for consideration by USCIS. USCIS shall conduct a de novo review of all evidence submitted in connection with Form I–918 and may investigate any aspect of the petition." (8 CFR § 214.14). The updates to the required initial evidence in the instructions for Form I-918A are not in line with these standards. For example, the instructions suggest that petitioners should include a curriculum vitae or resume when submitting an affidavit or report from a medical professional. This suggestion creates a heightened evidentiary standard that may be impractical for survivors to meet. A medical professional's CV is extraneous to a victim's petition for U Nonimmigrant Status and may be difficult to obtain. USCIS's request for such documentation seems to imply an unwarranted presumption of fraud.

Additionally, USCIS should eliminate the requirement that affidavits and reports from medical professionals submitted as evidence include a handwritten signature from the medical professional. Medical providers tend to have computer systems that use digital signatures only. In cases where medical evidence is appropriate, USCIS should find digital signatures sufficient.

III. Pro se petitioners

The burdens associated with the aforementioned changes to the Form I-918A instructions will be even greater on victims who are filing their petitions pro se. For example, it is onerous to obtain documentation related to criminal issues even when a victim is represented by counsel. It is unrealistic and unfair to expect petitioners filing pro se to have the adequate understanding, skills, and resources to navigate the process of requesting and obtaining certified police and court records.

The new language related to the Victim Personal Statement also places an increased strain on pro so petitioners who, without proper assistance, may not be able to effectively communicate their victimization due to factors such as lack of language access or issues related to their victimization, such as trauma.

In fact, lack of language access is a major hurdle to many aspects of petitioning for a U visa. USCIS only makes Form I-918A, Form I-918B, and their instructions available in English, and all sections of the forms must be completed in English. English is often not the first or even second language of many victims who are eligible to apply. In addition, filing a U visa petition necessitates that victims interact with numerous agencies, including law enforcement, the court system, and physical and mental health providers, to gather the required evidence. Many of these agencies do not provide adequate language access services, which tends to create a greater barrier for pro se petitioners.

Finally, the eligibility requirements are unlikely to be comprehensible to petitioners filing pro se. In particular, the requirement on Page 2 Item F states, "You are admissible to the United States, or have had all inadmissibility grounds waived." The language of the form, as well as the overall complexity of the concepts at hand, will likely preclude pro se petitioners from reaching the appropriate conclusions about their admissibility and thus serve as an additional barrier to the U visa program for victims who are unable to retain counsel. USCIS should add clarifying language that would be understandable for pro se applicants to apply for U visas and remove requirements that create artificially heightened standards for evidence and documentation.

IV. The proposed changes increase the burden on LEAs.

a. The proposed requirement that LEAs sign and seal the I-918 Supplement B is burdensome for LEAs and will likely result in mistakes.

The proposed changes include numerous procedural changes that will increase the burden on LEAs and likely discourage LEAs from completing and signing U visa certification forms. For example, USCIS suggests that LEAs should seal the certification in an envelope and sign the envelope across the seal and provide a copy for the victim and retain a copy for their own records. This requirement seems to mimic the requirements for I-693 Report of Immigration Medical Examination and Vaccination Record but is wholly inappropriate for the U visa process and ripe for errors. Unlike civil surgeons who are required to meet certain standards and must apply for and receive designation as civil surgeons, LEAs have no training on how to complete Form I-918 Supplement B. As advocates we have encountered LEAs who have never completed U visa certifications, nor even heard of U visas prior to our interactions with them. If LEAs submit Form I-918 Supplement B and fail to give the victim or attorney a copy of the form, errors may not be discovered for many years, after which correction may be difficult or impossible. This procedure is also more onerous for LEAs who are already being asked to complete additional paperwork for U visa applicants, something that LEA partners have complained about in the past. USCIS should be creating procedures that encourage LEAs to participate in the process, rather than creating additional burdens, which may prevent some immigrant victims from obtaining relief that they should be eligible for.

b. The requirement for LEAs to submit the signature and information of designated officials is also unduly burdensome for LEAs.

The proposed changes to instructions state that LEAs should submit information about the heads of their certifying agencies, designated certifying officials, and the signature of such persons on the LEA letterhead. This process creates additional administrative burden for LEAs, many who already find the process related to U visas overly burdensome. USCIS should continue to allow

LEAs to provide the relevant information as part of the Supplement B information, or allow them to submit the information with Supplement B, rather than requiring them to separately send this information to USCIS.

c. USCIS asks LEAs to provide commentary and speculation on issues outside the scope of their role.

In the proposed changes, LEAs are being asked to comment and speculate on many issues that are outside the scope of their role as the certifying official conducting investigation or prosecution of criminal activity. The new form instructions ask for LEAs to discuss any criminal history that they are aware of that the *victim* was involved in, which, as discussed above, in appropriately shifts the focus of the LEA onto investigating the victim rather than the criminal activity. It may also encourage an LEA to determine the worthiness of the victim in signing a certification based on criminal activity.

In discussing the qualifying criminal activity, USICS proposed several changes that are irrelevant or inappropriate for LEAs to discuss. For example, USCIS asks LEAs to discuss the motives of the perpetrator of the criminal activity, which seems wholly irrelevant to the certification and to the victim's status as a victim.

USCIS has also proposed extensive changes to the instructions asking LEAs to conduct legal analysis of the INA to determine and explain how the criminal activity they identified comports with the INA. This is an inappropriate request of LEAs who are well versed in the relevant state and federal laws in their jurisdictions, but will not likely have much experience with the INA. LEAs are currently required to list the relevant statutes they detected, investigated, or prosecuted and check the appropriate box for the qualifying criminal activity. This process is sufficient and appropriate for LEAs based on their own knowledge about the case and relevant laws.

USCIS should not ask LEAs to comment and provide information that is irrelevant, inappropriate, or difficult for them to comment on. These proposed changes will discourage LEAs from assisting victims, as it creates more administrative work for certifications.

V. Conclusion

USCIS should recognize that the U Visa program was created with a dual intent of assisting law enforcement and encouraging immigrant victims, who are frequently afraid and untrusting, to report crimes and participate in their investigation and prosecution. The changes proposes by USCIS increase the burden on LEAs, increase the burden on victims, and will likely block eligible individuals from being able to apply for U visas. Furthermore, USCIS has not provided any reasons why these changes are necessary or helpful to the underlying goals of the U visa

program. We strongly urge USCIS to reconsider many of the proposed changes and uphold their commitment to the protection of immigrant victims.

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MLRI MASSACHUSETTS LAW REFORM INSTITUTE

May 17, 2024

Submitted Electronically through the Federal eRulemaking Portal

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To Whom It May Concern:

The Massachusetts Law Reform Institute (MLRI) welcomes the opportunity to comment on the U.S. Citizenship and Immigration Services (USCIS) revision of a currently approved collection, entitled "Petition for U Nonimmigrant Status" published in the Federal Register on April 17, 2024.

Established in 1968, MLRI is a statewide nonprofit poverty law and policy center. Our mission is to provide advocacy and leadership in advancing laws, policies, and practices that secure economic, racial, and social justice for low-income people and communities in Massachusetts. As a state-level legal services support center, MLRI also provides substantive expertise and technical assistance in several areas of poverty law to civil legal aid providers, policymakers, and a large number of organizations that work with and/or serve low-income people and vulnerable populations in Massachusetts. Our comments draw upon the work and nationally-recognized expertise of MLRI lawyers and policy analysts in the areas of immigration, income inequality, and the cross-substantive racial justice lens with which MLRI approaches anti-poverty advocacy.

The I-918 Application for U Nonimmigrant Status and its accompanying forms I-918 Supplements A and B are incredibly important for the low-income immigrant community in Massachusetts and nationwide. It provides non-citizen victims of crime the safety and security needed to come forward, report the crimes committed against them, cooperate with law enforcement, and provides them a path to lawful employment and eventual permanent residence. The U nonimmigrant visa fosters trust between the immigrant and law enforcement communities and provides immigration relief to allow victims to recover from the crimes committed against them. We appreciate improvements USCIS has made to Form I-918 and the accompanying forms but recommend continued amendments to the proposed revisions to remove increased hurdles hindering access to the application process for noncitizens who need it.

1. Positive improvements to Form I-918 and instructions

We were pleased to see a number of improvements particularly in the instructions of Form I-918.

These improvements will assist in aiding applicants' understanding of their eligibility for a U visa, the requirements in filling out the form, and the I-918 process.

- **Inclusion of Direct and Indirect Victim Definitions:** The inclusion of the definitions of direct and indirect victim of a qualifying crime is a positive addition. It will help clarify specifically to applicants applying pro se how they may qualify as a victim of crime, especially as an indirect victim. We would recommend simplifying the language. Currently the language used is at a 18.93 grade level on the Flesch-Kincaid Grade Level scale.[1] Applicants using this form are most often non-native English speakers and the reading level of form instructions should be at an appropriate level for their anticipated audience.

- **Improvements in instructions for Principal Applicant:**

    - Part B of Principal Applicant on page 2 of the instructions removed the use of the past participle "having been" and replaced it with the present participle "being" to discuss the substantial physical abuse as a result of being a victim of a crime. Victims of qualifying criminal activities never cease being victims of a crime. Using "being" instead of "having been" reflects that reality.

    - Part D of Principal Applicant on page 2 of the instructions includes detection and sentencing of the qualifying crime in describing the helpfulness requirement for the U visa. Detection and sentencing are essential parts of the investigation and prosecution process. They are included in the regulations themselves, however applicants filing pro se are not likely to read the Federal regulations to determine what qualifies as investigation or prosecution. This more inclusive description is more accurate and gives applicants better information on how they may be eligible.

- **Removal of "N/A" and None Instruction:** Page 4 of the instructions removes the instruction to answer all questions fully and accurately and if a question does not apply type or print "N/A" or for a numeric response of zero use the word "none." The two sample questions used as examples of when to use none "How many children do you have" or "How many times have you departed the United States" do not exist as questions on the current Form I-918. There are in fact no numeric questions on the current I-918 where an applicant would respond with a number and so this instruction is superfluous. USCIS is no longer instructing applicants to use "N/A." "N/A" as an abbreviation does not accurately translate using common translation aids. For instance, Google translate simply translates the individual letters N and A and in languages that use the Roman alphabet there is no difference between "N/A" in English or other languages including Spanish. There is no explanation of what this abbreviation means. If a field does not apply an applicant should be able to leave a field blank as it does not apply.

- **Removal of Attestation Requirement at Biometrics Instruction:** The Form I–918 instructions also remove the recommendation on page 7 "to review your copy of your completed petition before coming in for biometrics" and that "USCIS will permit you to

[1] Readability Analyzer, https://datayze.com/readability-analyzer

complete the petition process only if you are able to confirm, under the penalty of perjury that all the information in your petition is complete, true, and correct." Applicants already sign Form I-918 under the penalty of perjury and confirm by their signature that the petition is complete, true, and correct. This should not be a requirement to do so at biometrics. If an applicant would not understand this attestation at this time, current instructions state USCIS will require them to return for another appointment. This is completely unnecessary and we are pleased that USCIS has removed this duplicate attestment from the biometrics requirement.

These improvements, while welcome, are a beginning in simplifying the process for non-citizens to access these important U non-immigrant benefits. We appreciate the opportunity to comment on Forms I-918, I-918 Supplement A, I-918 Supplement B and their instructions. There are possibilities for enhancing the quality, utility and clarity of these forms and the information they collected. MLRI would recommend the following revisions.

USCIS should reduce hurdles to accessing U status relief

2. USCIS should not incorporate "Best Practices" for Law enforcement in the I-918 Supplement B instructions

The proposed revisions for the I-918 Supplement B instructions lists best practices for law enforcement in completing the Supplement B certification.

The word instructions is defined as "orders or directions," and "the act of furnishing with authoritative directions."[2] Instructions by their very nature are viewed as procedures that must be followed.

These best practices are suggestions and not requirements. Including "suggestions" in the instructions, USCIS is giving them the appearance of orders and directions. They no longer are recommendations as to how to proceed but requirements for procedure, despite the fact that USCIS says they are "suggestions." Including them in the instructions, gives these "suggestions" more weight.

These "best practices" are also already included in the U Visa Law Enforcement Resource Guide. Including them in the instructions adds needless length to the instructions and is duplicative of the certification guide that law enforcement already has access to.

In the U Visa Law Enforcement Resource Guide, the very first message in the best practices section states " Certifying agencies are not required to have an internal policy or procedure before they can sign a U visa certification." This statement, however, is not included in the best practices USCIS now wants to incorporate in the instructions. While the instructions state these "best practices" are

[2] Dictionary.com, https://www.dictionary.com/browse/instruction

"suggestions," the language in the resource guide adds greater clarity and understanding for law enforcement. "Best practices" should always be discussed in this manner and therefore should be left in the resource guide and not incorporated in the Supplement B instructions. The instructions should then refer law enforcement to the resource guide for these "best practices."

Under the regulations, a certifying agency can include a law enforcement agency, prosecutor, judge or other authority that has the responsibility for the investigation or prosecution of a qualifying crime or activity at the Federal, state or local level. The types, sizes and locations of these agencies are incredibly varied. Given the great differences in the organization of certifying agencies, the law enforcement agencies are in the best position to determine what policies and procedures work best for their specific agency. USCIS's "best practices" are informative as to practices to include but may not be "best" for every law enforcement agency. It is important that law enforcement agencies have the ability to complete certifications as best suits them. There cannot be a one size fits all approach given the great variances between types of certifying agencies.

Therefore "best practices" recommendations should not be included in the I-918 Supplement B instructions and should remain in the U Visa Law Enforcement Resource Guide where they are best suited.

3. The "Sealed Envelope" best practice suggestion adds unnecessary Law Enforcement Agency steps and place hurdles in non-immigrants access to U benefits

The proposed revisions for the I-918 supplement B lay out a six step process for preparing the original Supplement B for submission.

1. Place the Form I-918, Supplement B and any supporting documentation into an envelope;

2. Seal the envelope;

3. On the front, write in capital letters: "DO NOT OPEN. FOR USCIS USE ONLY;"

4. On the back, write your initials across the seal where the flap meets the envelope;

5. Seal the entire flap with clear tape. Make sure the tape covers your initials as well as the flap; and

6. Give the sealed envelope to the petitioner for submission with their Form I-918.

USCIS is proposing to have law enforcement process the law enforcement supplement B as if they were USCIS designated civil surgeons completing the I-693 Immigration Medical Exam. Law enforcement officers should not be held to the same standards as designated civil surgeons.

Any law enforcement agency responsible for investigating or prosecuting a qualifying crime is eligible to certify on the I-918 Supplement B. There is no application process a law enforcement agency must apply through to become a certifying agency. On the contrary, not every doctor in the

United States is eligible to complete Form I-693. They must complete an application process through DHS to be allowed to be designated a Civil Surgeon for the purpose of completing the I-693.

Once a physician is so designated they then must follow technical instructions from the Center on Disease Control on how to conduct the medical exam. There are no technical instructions for law enforcement of the same level. In fact USCIS acknowledges that law enforcement agencies are not required to have an internal policy or procedure before they sign a Supplement B certification.[3]

If a law enforcement agency is not required to have an internal policy there should be no recommended procedure for them to complete the Supplement B including requiring the form to be placed in a sealed envelope in this six step process.

USCIS should be encouraging law enforcement agencies to work with crime victims and complete these supplements on behalf adding multi-step processes for completion place additional burdens on law enforcement which can serve to detract from their willingness to participate and place additional and unnecessary hurdles in the way of crime victims seeking to access U nonimmigrant benefits.

In addition, as stated above, this six step process is a "suggestion" however placing it in the instructions gives the impression that this process is now required because it is an instruction. This process already is contained in the U Visa Law Enforcement Resource and should remain there and not be incorporated into the Supplement B instructions.

4. The I-918 and I-918 Supplement B instructions conflict regarding the "sealed envelope" recommendation

As has been discussed the I-918 Supplement B instructions state that USCIS "suggests" these "best practices" and includes the six-step process of placing the certification form in a sealed envelope. According to the instructions to law enforcement completing this form, this process is optional as it is "suggested" and not required.

This is in contrast with the discussion of the I-918 Supplement B in the applicant's Form I-918 instructions. The I-918 instructions in fact state that the Supplement B certification should be "properly sealed by the certifying agency." USCIS is telling law enforcement completing the form that sealing the certification is optional but telling the applicants at the same time that sealing the certification is required.

This conflict in instructions will cause great confusion and result in applicants returning to law enforcement requesting that their certification forms be placed in sealed envelopes as the I-918 instructions propose to require. This conflict could have the effect of mandating this process that

[3] DHS U Visa Law Enforcement Resource Guide, pg 11
https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf

USCIS informs law enforcement is optional and a "suggestion."

USCIS should reconcile these instructions. As the I-918 Supplement B states this sealing is a suggestion, there should be no mention of sealing the certification in the applicant's instructions. Removing this direction from the I-918 instructions will avoid confusion and unnecessary hurdles to crime victims accessing the U visa benefits.

5. USCIS should remove added unnecessary criminal history documents such as requiring certified copies of police reports.

USCIS in the proposed revisions add additional and unnecessary hurdles to crime victims accessing the U visa process with additional requirements for records of an applicant's criminal history.

The I-918 instructions proposed to collect

- Original or certified copies of the complete arrest report
- An original statement by arresting agency or prosecutor's office or applicable court order that indicates the final disposition of arrest or detention
- Certified copies of both the indictment, information, or other formal charging document and the final disposition
- Certified copy of any plea agreement, whether in court filing form or recording in a hearing transcript
- Original or certified copy of probation or parole record
- Certified copy of court order vacating, setting aside, sealing, expunging, or removing the arrest or conviction

An applicant's criminal history is first used to determine whether an applicant is inadmissible to the United. States. Most criminal inadmissibility grounds require a conviction.[4] To demonstrate a conviction or lack thereof, a certified copy of a court disposition is a sufficient record to meet the evidence required or in the absence of such a record a letter from the record holding agency that no such record exists. The proposed I-918 instructions would require a greater evidentiary burden that is unnecessary to establish an applicant's admissibility and should be removed from the instructions.

If an applicant is inadmissible, they then must demonstrate that they merit a positive exercise of discretion in their non-immigrant waiver application Form I-192. No statutory provisions explicitly require USCIS to request or rely on police reports or arrest records, USCIS therefore requests these documents under the authority of the agency's residual discretion.[5] However, to meet the definition

[4] INA 212(a)(2)

[5] Rosenbaum, Erica D., Relying on the unreliable: Challenging USCIS's use of police reports and arrest records in affirmative immigration proceedings NYU Law Review, pg. 262 https://www.nyulawreview.org/issues/volume-96-number-1/relying-on-the-unreliable-challenging-uscis

of a U nonimmigrant under the INA, an applicant is eligible if they have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime, has information about the qualifying crime; has been, is being, or will likely be helpful in the investigation or prosecution, and the criminal activity violates the laws of the US or occurred in the U.S.[6] There is no discretionary element under the statute.

Further under the INA for admission of nonimmigrants at section 214, there is no requirement under that section of the INA that U nonimmigrants demonstrate they merit a positive exercise of discretion.[7] The USCIS policy manual in discussing U visa adjudication does not include a determination of discretion in decisions on waiting list (interim benefits) or final adjudication (full benefit) both of which determine eligibility for U nonimmigrant status.[8] It does include a discretionary analysis for a bona fide determination but the policy manual states that this does not make a final determination of eligibility.[9]

As discretion is not an element for U visa eligibility and records other certified copies of disposition or records of lack of conviction do not demonstrate whether one is inadmissible for criminal convictions, the addition of a complete criminal history record from police records to probation is not necessary to determine U eligibility. Therefore, these documents should not be listed as required evidence in the I-918 instructions.

5. Police reports are unreliable as evidence and unduly prejudicial to applicants.

The I-918 proposed instructions seek to include requiring applicants to submit certified copies of police reports for any arrest whether there were any charges brought or not. The Supreme Court has held that the fact an individual has been arrested "'has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense.'"[10] Police reports are a single, incomplete version of events and do not guarantee a complete picture of the situation that led to the report.[11] Police often do not have first-hand knowledge of the situation when writing the report and base their notes on statements from bystanders and witnesses.[12] "Nearly every federal circuit court of

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s-use-of-police-reports-and-arrest-records-in-affirmative-immigration-proceedings/ (last visited May 16, 2024)

[6] INA 101(a)(15)(U)
[7] INA 214(p)
[8] 1 USCIS-PM E.8.A
[9] *Id.*
[10] Rosenbaum, *supra.*, pg 267-268 citing *Schware v. Board of Bar Examiner,* 353 U.S. 232,241 (1957)
[11] *Id.* at 268
[12] National Immigrant Justice Center, Explainer *Prejudicial and Unreliable: The Role of Police Reports in U.S. Immigration Detention & Deportation Decisions* (July 2022) https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-07/Prejudicial-and-Unreliable-policy-brief-explainer_FINAL_July-2022.pdf (last accessed May 17, 2024)

appeals and Congress has recognized the inherently unreliable or prejudicial nature of police reports for revealing what actually occurred in any given incident."[13]

Relying on police reports in immigration benefits determinations "disproportionately harms Black and Brown immigrants" who are disproportionately stopped, arrested and racially profiled in the criminal legal system.[14]

Given the inherently unreliable and prejudicial nature of police reports, USCIS should remove the requirement that they be filed for every arrest and detention anywhere in the world. This requirement is overly burdensome to victims of crime seeking immigration relief, does not determine an applicant's eligibility for U nonimmigrant status and is highly prejudicial to the application to relief.

6. USCIS should remove the additional hurdles to crime victims seeking immigration relief imposed by requiring certified copies of unnecessary criminal history records

The I-918 instructions proposed to collect from anywhere in the world:

- Original or certified copies of the complete arrest report
- An original statement by arresting agency or prosecutor's office or applicable court order that indicates the final disposition of arrest or detention
- Certified copies of both the indictment, information, or other formal charging document and the final disposition
- Certified copy of any plea agreement, whether in court filing form or recording in a hearing transcript
- Original or certified copy of probation or parole record
- Certified copy of court order vacating, setting aside, sealing, expunging, or removing the arrest or conviction

These requirements place steep hurdles in the way of immigrant crime victims seeking relief from the crimes they suffered. USCIS does not sufficiently define what an "original"copy of these records would involve. Most often individuals seeking arrest reports from police departments receive a print out of the police reports. USCIS fails to indicate whether this suffices this new requirement or not. It is also very unusual to see a "certified copy" of a police report from a police department. Requiring applicants to seek this could cause great confusion in working with police departments and lead to unnecessary delay and frustration in the application process.

Certified records cost money. USCIS fails to account for the fact that many U visa applicants are low-income victims of crime. These applicants are recovering from the crimes committed

[13] National Immigrant Justice Center, *Prejudicial and Unreliable* (full policy brief) pg 2 https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-07/Prejudicial-and-Unreliable-policy-brief-FINAL_July-2022.pdf

[14] NIJC Explainer, *supra.*

against them and having to cover certifying costs simply to seek relief as a victim of crime for which they are eligible, is a needless financial hurdle. This is greatly expanded if a record has to be acquired from outside the U.S. as these requirements extend to anywhere in the world.

USCIS also does not account for the impact of foreign criminal processes and that the documents they are seeking may not actually exist or the process of trying to obtain these documents could take extended periods of time further prolonging the crime victim's ability to seek immigration relief and recover from the crime committed against them.

Additional criminal history documents that do not establish an applicant's conviction history are unduly burdensome both to the application process and financially to the applicant, they are unreliable and prejudicial to the applicant, and do not establish an applicants eligibility for U nonimmigrant status as a victim of crime. USCIS should remove these document requirements from the I-918 instructions.

7. USCIS should remove the instruction that applicants without social security numbers type or print "N/A".

On page three of the proposed I-918 instructions USCIS deleted the instruction to applicants to respond "N/A" if a question does not apply to you. Then two pages later on page five, the instruction for item number 8, U.S. Social Security number instructs applicants to do the exact opposite of what they were told two pages earlier.

USCIS is proposing the new instruction state "If you do not have a U.S. Social Security Number, type or print "N/A." The current I-918 instructions state "if you do not have a U.S. Social Security Number or do not know it leave it blank." This should be the instruction on the proposed form.

"N/A" is an abbreviation and does not translate into other languages as anything other than the abbreviation which would have no meaning in other languages. Google translate simply translates the individual letters N and A and in languages that use the Roman alphabet there is no difference between "N/A" in English or other languages including Spanish. The instructions provide no explanation of what this abbreviation means. Applicants must sign the I-918 form under the penalties of perjury attesting that all the information on it is true and correct. If they cannot understand what N/A means and simply followed the instructions, they do not actually know if the information for the U.S. Social Security number is true and correct.

There is also a difference in how USCIS instructs applicants to complete the Alien Number item versus the social security number item. These are two items that are very similar and often applicants without social security numbers will also lack alien numbers. The proposed instruction for item 6 alien registration number states "If you do not have an A-Number or do not know it, leave this space blank."

These two instructions should mirror each other. There is no reason to differentiate between A# and social security number. Those items should be completed in the same way. The best way to avoid confusion and misunderstanding, is to instruct applicants to fill it in or leave it blank if there is no number. There should be no requirement to put N/A in a numeric item field. USCIS should amend this instruction to mirror the alien registration number item instructions for greater clarity.

8. **USCIS should correct language that the applicant is helpful to the certifying official to helpful to the certifying agency.**

In describing the principal petitioner's eligibility, USCIS on page two item D states that the helpfulness requirement is to "the certifying official in the investigation or prosecution. " The I-918 Supplement B instructions to law enforcement on page two under "When Should I Use Form I-918 Supplement B?" says the certifying official may complete the form if they determine the victim was, is or is likely to be "helpful in your agency's" detection, investigation, or prosecution of the qualifying crime.

The applicant does not have to be helpful to the specific certifying official. USCIS requires I-918 Supplement B forms to be signed by the head of the law enforcement agency or a designated official. This often is not the law enforcement officer the crime victim engaged with in the investigation or prosecution. Designated officials can review the agency's records to determine whether a crime victim has been helpful as required. Designated officials may have had no direct contact with the victim.

USCIS should reword the instructions for the I-918 to agree with all other references to helpfulness to reflect helpfulness to the law enforcement agency and not the specific certifying official.

MLRI appreciates the opportunity to comment on Forms I-918, I-918 Supplements A and B and their accompanying instructions and thanks USCIS for the improvements already made to the forms. We recommend that USCIS carefully review our additional recommendations for improvements to help remove unnecessary barriers to crime victims accessing this important immigration relief. Application preparation and processes should not be overly complex or place a financial burden on crime victim applicants seeking to benefit from the U visa program.

Respectfully submitted,

Jeanne Funk, Esq.
Iris Gomez, Esq.
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May 17, 2024

Ms. Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services

RE: Comment in response to DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status; OMB Control Number 1615-0104 Docket ID: USCIS-2010-0004

Dear Ms. Deshommes:

MetroWest Legal Services is a civil legal aid organization that offers legal assistance to clients in the MetroWest region of Massachusetts. Our immigration unit provides immigration legal assistance to survivors of crime, special immigrant juveniles, asylum seekers, pro se individuals living in shelter, and Afghan evacuees. MetroWest Legal Services has proudly represented survivors of crime in their U visa applications since 2009.

We hope that this comment on the proposed changes to the Form I-918 Supplement B assists USCIS in examining the impact of them on survivors of crime, Law Enforcement Agencies ("LEA")s, legal aid organizations, and USCIS itself. While we appreciate some of the language in the proposed form clarifying the roles of USCIS and LEAs, we are concerned that the changes to the questions themselves blur these lines, encourage LEAs to investigate survivors on behalf of USCIS, disempower survivors, and overly complicate certification. We are concerned that the USCIS has not accounted fully for the information collection burden that would be shouldered by survivors, LEAs, legal aid organizations, and USCIS.

I. Requesting information about a survivor's culpability and/or criminal history on Form I-918 Supplement B is prejudicial to immigrant survivors of crime and beyond the scope of the LEA's role

Determining whether a survivor is culpable is within the purview of a criminal case adjudicator (ie. Judge or jury) and should not be shifted onto LEAs. The proposed changes to Page 4, Part 4, Item 5 of the I-918 Supplement B Form require LEAs to check "yes" or "no" to indicate whether the survivor was "culpable in the qualifying criminal activity detected, investigated, or prosecuted." When "yes" is checked, the LEA is given space to provide an explanation and copies of relevant documentation. This proposed addition to the form would require LEAs to perform their own legal analysis into whether a survivor is culpable and what "culpable" means. LEAs may rely on uncorroborated, unreliable, and uncontested evidence, such as police/arrest reports, which would constitute inadmissible hearsay in federal court proceedings and double hearsay when provided to USCIS on Form I-918 Supplement B. If USCIS were to rely on an LEA's allegations of culpability, this would impinge on the due process owed to the U visa petitioner who would be left without the opportunity to rebut them in a court of law.

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By asking LEAs to determine a survivor's culpability, the form invites LEAs to make legal determinations about whether the survivor should be recognized as a "victim" for purposes of determining U Visa eligibility rather than leaving that responsibility with USCIS. Per the regulations, if the survivor is "culpable for the qualifying criminal activity being investigated or prosecuted [, the survivor] is excluded from being recognized as a victim of qualifying criminal activity."[1] It lies solely with USCIS to determine whether a survivor has met the legal standard required to be classified as a "victim" for the purposes of U Nonimmigrant status. While LEAs investigate and prosecute crime, most LEAs do not have the expertise, training, or authority to interpret immigration law. By asking LEAs to decide a survivor's culpability at the certification stage, USCIS is shifting the determination of U visa eligibility onto LEAs.

II. Requesting "supplemental information" about immigrant survivors from LEAs is both unnecessary and harmful to immigrant survivors

Part 8 of the Proposed Form I-918 Supplement B which provides a space for LEAs to provide "supplemental information that may be relevant to USCIS adjudication" is both not necessary and harmful to immigrant survivors seeking certification from LEAs. The instructions suggest this supplemental information could include information "related to arrest and criminal history." It is the role solely of USCIS to adjudicate Petitions for U Nonimmigrant Status. In adjudicating an application, USCIS will consider an applicant's criminal and/or arrest history to determine whether inadmissibility grounds may apply in the case. In contrast, the role of LEAs in the U Visa application process is to certify whether the immigrant survivor "is, has been or, is likely to be helpful in the investigation, prosecution, or detection of the crime."[2] The proposed change to the form invites LEAs to do their own investigations into survivors, allowing LEAs to potentially make their own legal conclusions again supported by uncorroborated, unreliable, and uncontested evidence, such as police/arrest reports. It is important to highlight that this type of evidence is inadmissible hearsay in federal court proceedings.

Additionally, this solicitation of negative information about immigrant survivors is not trauma informed. It is essential to consider the impact and the trauma a survivor's victimization may cause. While the form does note that victims of domestic violence may be accused of domestic violence by their abusers, even this acknowledgement this fails to recognize the multitude of complex circumstances that may lead to a survivor having contact with law enforcement or being arrested. For example, a client of our office, after suffering substantial emotional harm as a result of a rape, became very depressed which led her to start consuming larger amounts of alcohol than she had before she was raped. Following her victimization, this survivor was arrested after she had been drinking and got into an argument. In her application for a U Visa, this survivor explained the connection between her victimization and her arrest and how the arrest had made her realize that she needed to find better and healthier ways to cope with

[1] 8 CFR § 214.14 (a)(14)(iii).
[2] DHS U Visa Law Enforcement Certification Resource Guide at 7, available at https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

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her trauma. Her application was reviewed by a USCIS adjudicator who was trained to consider trauma and USCIS ultimately granted the U visa application. Allowing LEAs to draw legal conclusions about survivors without being trained to consider this context or adjudicate U visa applications would be harmful to survivors and contrary to the stated goal of U Visas, which is to provide a remedy to immigrant survivors of crime.

Finally, the instruction to provide supplemental information that may be relevant to adjudication requires LEAs to determine what supplemental information may be relevant to adjudication. The proposed change gives LEAs unlimited discretion to insert information into the record that may not be relevant to adjudication and may be prejudicial to the survivor. Many LEAs do not have expertise in immigration law and are likely not well-trained in identifying what information may be relevant to adjudication. This creates confusion for LEAs and has the potential to add more time to the LEA certification process. This proposed change also has the potential to add time to USCIS' adjudication process, as USCIS will have to wade through information that LEAs include in the supplemental information that is not relevant. By soliciting supplemental information from LEAs, the proposed change invites confusion about the role of the LEA versus USCIS.

III. The Proposed Form I-918 Supplement B improperly requires LEAs to engage in legal analysis, which increases the time burden on LEAs

The changes to the Form I-918 Supplement B include an additional item- Page 4, Part 4, Item 4- which reads, "If the qualifying criminal activity. . . is similar to one or more of the above selected categories listed in Part 4., Item Number 3. (for example, felonious assault), please list and provide a detailed explanation of the nature and elements of the criminal activities you detected, investigated, or prosecuted."

According to the USCIS U Visa Law Enforcement Certification Guide, certifying agencies may include Federal, State, and local law enforcement agencies, prosecutors' offices, family protective services, the EEOC, federal and state departments of labor, and other investigative agencies.[3] These different certifying agencies have different roles in the investigation and prosecution of crimes. For example, police have expertise in investigating crimes, which means they try to gather facts that a prosecutor could later argue satisfy the elements of the crime. Neither police departments nor prosecutors' offices make the ultimate legal determination; it is a judge or jury that determines whether the alleged facts have been proven and whether they correspond with the legal elements of the crime. Requiring certifying agencies which do not typically act as judges to write up a legal analysis on the Proposed Form I-918 Supplement B would be an added time burden on certifying agencies and would require them to take on a role that is outside their expertise.

[3] DHS U Visa Law Enforcement Certification Resource Guide at 2-3, available at https://www.dhs.gov/xlibrary/assets/dhs_u_visa_,certification_guide.pdf.

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Besides filling different roles in the investigation and prosecution of crimes, certifying agencies enforce different systems of law depending on whether they are local, state, or federal agencies. Under the proposed form, a local or state agency encountering criminal activity that is similar to one of the U visa qualifying crimes would have to provide a write-up examining the elements of the state or local law and comparing them to the elements of qualifying crime under federal law. This is problematic because it requires state and local agencies to analyze federal law, which is outside the scope of their role in our federalist system. This additional analysis would be a time burden on the LEAs because it would require them to familiarize themselves with conducting legal analysis involving federal law. Given that many LEAs lack the training to conduct this kind of immigration legal analysis, their answers to the questions on the proposed form may make it more cumbersome for USCIS to process the form.

In July 2021, as a result of much advocacy by Legal Aid Organizations in Massachusetts, the Massachusetts Legislature passed a state law to create a more consistent and streamlined process for obtaining certifications from LEAs in Massachusetts. The Massachusetts statute requires that (1) certifying agencies establish a policy for U/T certification; and (2) Certifying agencies respond to a request for certification within ninety (90) days, unless there are extenuating circumstances outside of the agency's control.[4] As USCIS increases the time burden of the Form I-918 Supplement B on LEAs by adding new questions and requested explanations to it, LEAs in Massachusetts will still have ninety (90) days to respond to certification requests. Rather than making it easier for LEAs to efficiently fill out the form, this proposed form would make it harder.

The role of the certifying agency is to confirm that the applicant has been helpful in the investigation or prosecution of the qualifying crime, not to make determinations about the applicant's eligibility for a U visa. We appreciate the addition of the note on Page 4, Part 4 which states,

> USCIS, and not certifying agencies, determines whether the crime is a qualifying criminal activity for eligibility for U nonimmigrant status. To make this determination, USCIS considers information and other documentation provided by a certifying agency, such as police reports, charging documents, etc. (if available) regarding the qualifying criminal activity that occurred and the statutory violation that the agency detected, investigated, or prosecuted. USCIS determines whether the crime is substantially similar to a qualifying criminal activity based on the totality of the evidence.

This note helpfully clarifies to LEAs that their role is to indicate the statutory violation so USCIS can determine whether it is substantially similar to one of the qualifying crimes. Rather than muddle the roles of the certifying agency and USCIS by including Item Number 4 (which

[4] M.G.L. ch. 258F.

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instructs LEAs to conduct a detailed analysis of the nature and elements of the crime), USCIS should remove Item Number 4 from the Proposed Form I-918 Supplement B and conduct an analysis based on the text of the law and legal arguments presented by the applicant or their attorney/accredited representative.

IV. Proposing that the Form I-918 Supplement B be sealed in an envelope by the LEA is too significant a change to be made through a form change, disempowers survivors of crime, and puts an added burden on USCIS, LEAs, and legal aid organizations

The proposed changes to Form I-918 Supplement B include a new proposition not mandated by Congress nor by regulation that LEAs place Form I-918 Supplement B in a sealed envelope to be submitted by the applicant to USCIS. USCIS's language in the proposed form about LEAs sealing the envelope with the I-918 Supplement B "suggest[s] . . . best practices for submission" and provides a procedure that should be used "if possible." This does not make clear whether the sealing is a requirement or merely appreciated. Applicants are left without knowing how USCIS would determine if it is possible to submit a sealed envelope and without knowing how USCIS would treat the form when it is submitted in an unsealed envelope.

USCIS has provided no explanation to justify adding this step of sealing the envelope. Proposing an update to the form is not the proper avenue for making this change. In the adjustment of status context, USCIS has regulations to mandate that civil surgeons place examinations required for adjustment of status in sealed envelopes. *See* 42 CFR 34.3(f). If USCIS wishes to require LEAs to place their certifications in the I-918 Supplement B, this change should be proposed through a rulemaking process rather than a form change.

The U visa was designed to empower immigrant survivors of crime to come forward to report crimes and assist law enforcement. Receiving a certification from an LEA can be a very empowering part of the U visa process. The certification not only shows the victim that the law enforcement agency recognizes their helpfulness, but it also shows the victim that the law enforcement agency recognizes what happened to them as unacceptable and a crime. When survivors understand that LEAs will listen to them and investigate the crimes perpetrated against them, they tell others in the community, and more survivors come forward. This enables law enforcement to investigate and prevent crime. The sealed envelope would close this feedback loop by preventing survivors from seeing that they have been heard by the LEA. Without this information, other survivors may be unwilling to come forward and this change in procedure would undermine the goals of the U visa.

In our work as immigrant advocates, we unfortunately see many instances in which immigrant clients do not know the content of applications filed on their behalf by notarios and unscrupulous attorneys. We believe that best practice is to explain and show clients the contents of all documents filed in their case. When the Form I-918 Supplement B is given to the applicant

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or their attorney in a sealed envelope, this disempowers the client by stripping them of the opportunity to understand the contents of their immigration file. This is especially true where the proposed form encourages LEAs to include unproven allegations that could be detrimental to the survivor. We are concerned about the due process implications of survivors not being able to review the Form I-918 Supplement B which may later be weighed against them. Rather than empowering survivors of crime, the sealing requirement would disempower them.

As advocates for immigrant survivors, we anticipate that adopting a practice of sealing the Form I-918 Supplement B would lead us to seek a copy of it through the Freedom of Information Act ("FOIA"), which would add an additional time burden on USCIS. In addition to the time it takes to locate, redact, and scan FOIA records, USCIS would likely need to send files between the Service Centers working on U visas and the FOIA Program, which would slow down case processing times and make each case more expensive to adjudicate. For legal aid organizations like our own, additional FOIA requests would mean we would spend more time working on each case, which would further limit our capacity to assist survivors.

Sealing the envelope with the Form I-918 Supplement B will be more burdensome than anticipated on LEAs, USCIS, and the legal aid community. In our years of experience representing clients applying for U visas, we have found ourselves serving as an invisible screen between LEAs and USCIS as we review the Form I-918 Supplement B to make sure it is filled out completely and correctly before sending it to USCIS. Having the LEA seal the envelope holding the form would take away this screen and mean that USCIS would receive more incomplete or incorrectly filled out Forms I-918 Supplement B. We anticipate that more sealed envelopes will necessitate more Requests for Evidence ("RFEs"), which would further delay adjudication. [5] Because of the cap on U visas, it can take many years for USCIS to look at the file and these incomplete or incorrectly filled out forms may not be discovered until the missing information is lost to time.

From when the U visa was created and LEAs were first tasked with certifying the Form I-918 Supplement B to the present, much of the burden of educating LEAs about U visas has fallen on legal aid organizations. Today, as USCIS is working to adjudicate U visa applications that were filed in November 2016 or prior, legal aid organization attorneys and accredited representatives file new U visa applications while continuing to represent our clients who have filed U visa applications over the last 7+ years. This means our caseload continues to grow because of the cap on U visas. Moving toward a system of sealing the envelope holding Form I-

[5] The previous administration had a "no blank space rejection policy" policy where USCIS routinely rejected applications where any space was left blank. If such a policy returns under a future administration, the Form I-918 Supplement B changes being considered would result in more rejected applications, which would prolong the already 10+ years long U visa process for survivors.

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918 Supplement B will result in our staff having to devote more of their time to educating LEAs about this change and reduce their capacity to take on new cases.

V. Conclusion

We appreciate the language in the form changes that clarifies the division of responsibilities between LEAs and USCIS. However, we hope that USCIS will reconsider the proposed changes to the forms insofar as they would prejudice and disempower survivors of crime, delegate USCIS responsibilities to LEAs, and cause USCIS, LEAs, and legal aid organizations to devote additional precious time to adjudicating, filling out, and educating about Form I-918 Supplement B.

We respectfully submit this comment on behalf of MetroWest Legal Services,

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May 17, 2024

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy & Strategy
U.S. Citizenship & Immigration Services
Department of Homeland Security

Submitted via www.regulations.gov

RE: "Agency Information Collection Activities; Revision of a Currently Approved Collection; Petition for U Nonimmigrant Status"
OBM Control Number: 1615-0104
Docket ID: USCIS-2010-004

Dear Ms. Deshommes:

These comments are submitted on behalf of Texas RioGrande Legal Aid (TRLA) in response to USCIS's "Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status," initially published in the Federal Register on November 9, 2023 and later published again on April 17, 2024 to allow an additional 30 days for public comment.

Founded in 1970, TRLA has grown into the nation's second largest legal aid provider. TRLA provides free legal services to low-income residents of 68 counties in south and west Texas as well as low-income migrant farmworkers in six states throughout the South. Each year, TRLA serves over 15,000 clients, including approximately 1,000 clients seeking assistance with immigration matters. TRLA's noncitizen clients are primarily survivors of domestic violence, sexual assault, human trafficking, and other serious crimes.

Since the U visa program was created, TRLA has represented hundreds of low-income noncitizen survivors in their petitions for U nonimmigrant status. We also have advised thousands of noncitizen survivors of serious crimes on their eligibility for U nonimmigrant status and the process for applying for a U visa. This expertise affords our organization a deep understanding of the practical realities and challenges of completing forms I-918 and I-918A and obtaining signed form I-918 supplement Bs from law enforcement agencies throughout Texas and the South. We applaud USCIS's efforts to revise these forms and greatly appreciate USCIS's decision to extend the comment period so that we may provide feedback on these proposed form revisions. Our specific comments are below.

I. Comments and Recommendations Regarding Forms I-918/I-918A and Instructions

a. Table of Arrivals and Departures

TRLA opposes the addition of the table on page 3, part 2 of form I-918 and page 4, part 5 of form I-918A, requiring that applicants list each arrival and departure they have made to and from the United States since April 1, 1997.

First, requiring that applicants attempt to provide a complete accounting of all their entries and exits for the past three decades is unnecessary. USCIS does not request that applicants provide this kind of arrival and departure information on other immigration forms or in other similar contexts. Forms I-918 and I-192 already contain many other questions designed to capture an applicant's immigration history and inadmissibility grounds. And to the extent that applicants have relevant immigration history not captured by these existing questions, USCIS also has access, through the collection of applicants' biometric information, to a multitude of records regarding applicants' entries and exits and contacts with the immigration system. These records generally provide more specific and accurate dates than those an applicant might provide on this proposed table.

Second, this table is unduly burdensome on applicants and their representatives. USCIS estimates that it will take an average respondent 4.92 hours to complete form I-918 and 1.25 hours to complete form I-918A. Based on our experiences, however, USCIS vastly underestimates the time and resources required to gather the necessary information about an applicant's entries and exits and complete this table. USCIS seeks to require information going back almost 30 years. Many of our clients were brought to the U.S. when they were young children and they commonly do not remember or do not know the details of when and where they entered the U.S. Requiring a precise accounting of all one's entries and exits also ignores the practical realities border life; many of our clients who live near the U.S./Mexico border have had border crossing cards (B1/B2/BCCs) for decades and frequently make visits to the U.S. without a formal record of their travel (such as an I-94 or stamp in their passport). We often are compelled to use significant investigative resources to obtain more specific information about our clients' entries and exits, for example by interviewing them and their family members at length and submitting FOIA requests to various agencies within DHS, the results of which commonly take months to receive and which often are still incomplete.

Finally, requiring applicants to provide information that many noncitizens cannot realistically or accurately provide may lead to unfounded allegations of fraud or misrepresentation. Unfortunately, in our experience, applicants attempting to honestly report accurate information about their entries and exits are regularly still wrong in their recollections of their travel history, due to trauma, young age, or simply because human memory is flawed. Even without the additional barriers and vulnerabilities that many U visa applicants face – lack of formal education, language access, poverty, repeat victimization, etc. – anyone would be hard pressed to compile an accurate and specific recounting of their travel for the last 30 years, let alone in under five hours. Particularly

where USCIS has access to more accurate records of an applicants' entry and exit dates, we fear that inconsistencies between an applicants' reported immigration history and recorded immigration history will lead USCIS to find that the applicant is not credible or has committed fraud or made willful misrepresentations of materials facts, when they were simply trying their best to comply with USCIS's instructions and provide the required information.

For these reasons, we suggest that USCIS return to its past practice of asking only about an applicant's entries and exits for the past five years. If USCIS disagrees and keeps this table in the new forms I-918 and I-918A, we request that the form instructions be updated to either make this table optional rather than required, or to advise applicants to do their best to provide the requested information while acknowledging that many applicants will need to guess or provide approximate information about their entry and exit dates. Alternatively, we ask that USCIS not require information about an applicant's entries and exits before they turn 18, as this information may be particularly difficult for applicants to obtain and is less relevant for certain inadmissibility grounds.

b. Questions Regarding Fraud and Misrepresentation

TRLA also opposes the changes made to part 2, questions 25 and 26 on form I-918 and part 5, questions 25 and 26 on form I-918A regarding fraud and misrepresentation.

These revised questions are overbroad and capture irrelevant information that falls outside the inadmissibility grounds contained at INA § 212(a)(6)(C). For example, an applicant would only be inadmissible under INA § 212(a)(6)(C)(i)(I) if they *willfully* misrepresented a *material* fact when seeking to procure an immigration benefit. However, question 25 on the new forms I-918 and I-918A asks applicants to disclose *any time* they have ever lied, concealed, or misrepresented *any* information on an application for any immigration benefit, regardless of whether it was done willfully or whether the information was material. The scope of question 26 on new forms I-918 and I-918A is even broader. It asks if an applicant has *ever* falsely claimed to be a U.S. citizen *in any way*, even though a person is only inadmissible under INA § 212(a)(6)(C)(ii) for false claims made after April 1, 1997 for the purposes of a benefit under the INA or another federal or state law.

As written, these updated questions will likely lead to unnecessary and preventable Requests for Evidence ("RFE"s) which would further strain USCIS's already limited adjudicatory resources. Consider, for example, a U applicant who as a child told bullies making fun of her skin color and directing her to go back to her country that she was a U.S. citizen. This applicant would need to answer "yes" to question 26 on the proposed form I-918, and she might neglect to include an explanation. USCIS would likely need to issue an RFE to request information about the circumstances of her false claim. This RFE would be entirely avoidable. If question 26 more closely mirrored the language of INA § 212(a)(6)(C)(ii), the applicant would've answered "No" and USCIS would not have needed to inquire further about her potentially inadmissibility under INA § 212(a)(6)(C)(ii) or her need for a waiver of that ground.

Even more importantly, these overbroad questions could lead to erroneous determinations of inadmissibility under INA § 212(a)(6)(C) which could have extremely harsh and lasting negative consequences for applicants. Take, for example, a *pro se* U applicant who told his U.S. citizen girlfriend in the early days of their courtship that he too was a U.S. citizen. If the U applicant answers yes to question 26 on his form I-918 and explains "I once claimed to be a U.S. citizen even though I am not," USCIS may erroneously determine that he is inadmissible under INA § 212(a)(6)(C)(ii). If, during the twenty-plus years his U visa application will be pending, the *pro se* U applicant later marries his U.S. citizen girlfriend and his now wife decides to file an I-130 family petition for him, he may be forever incorrectly deemed ineligible to obtain lawful permanent residence through this family petition, which of course, could be a much quicker path to immigration status and stability in the U.S. than the U visa.

For these reasons, we respectfully request that USCIS revise the questions about fraud and misrepresentation on forms I-918 and I-918A to more closely track the language of INA § 212(a)(6)(C)(i) and (ii).

c. Instructions for Submitting Affidavits and Reports from Medical Professionals

TRLA opposes the new and additional guidance which suggests that any affidavits or reports from medical professionals, including doctors, therapists, and mental health evaluators, should be accompanied by the medical professional's *curriculum vitae* or resume. This expectation is unduly burdensome, particularly for low-income applicants and applicants who live in rural and underserved communities like those that comprise much of TRLA's service area. Clients in rural Texas and the South already struggle to find adequate medical and mental health services[1] and to obtain affidavits or reports from their providers. It is not common practice for these providers to share their CV or resume with us in conjunction with any affidavits or reports we are able to obtain. Many times, these providers have dedicated their careers to serving rural communities and have worked in these communities for a long time without moving or changing jobs. Accordingly, many likely do not have an updated CV or resume on hand to provide to U applicants. Adding this additional hurdle will disproportionately disadvantage the most vulnerable applicants for U nonimmigrant status and therefore frustrate the goals of the U visa program, which was created to protect vulnerable noncitizen victims of crime.

[1] *See, e.g.*, Ali Juell, "Most Texas Border Counties Lack Adequate Medical Facilities and Staff. Local Leaders Are Trying to Fix That." THE TEXAS TRIBUNE (Dec. 14, 2023), https://www.texastribune.org/2023/12/14/health-care-border-counties/; Stephen Simpson, "Texas' Shortage of Mental Health Care Professionals Is Getting Worse," THE TEXAS TRIBUNE (Feb. 21, 2023), https://www.texastribune.org/2023/02/21/texas-mental-health-workforce-shortage/ ("98% of Texas' 254 counties are wholly or partially designated by the federal government as "mental health professional shortage areas.").

II. Comments and Recommendations regarding Form I-918 Supplement B and Instructions

a. Increased Form Length and Questions Outside the Scope of the Certifying Agency's Role

TRLA opposes the increased length of the proposed new form I-918 supplement B (now seven pages instead of five) and suggests that USCIS remove questions from the form that are outside the scope of the certifying agency's role. For example, USCIS should eliminate questions about the culpability of the victim and the victim's injuries, as well as the supplemental space for law enforcement to provide unspecified and potentially prejudicial information about the victim. These questions are unnecessary, add to the burden of completing form I-918 supplement B for already strained law enforcement agencies, send mixed signals to the certifying agencies about their role in the U visa process, and ultimately frustrate the purposes of the U visa program.

First, questions on form I-918 supplement B about victim culpability, victim injuries, and other unspecified and potentially prejudicial "supplemental information" are unnecessary. The applicable statutes and regulations only require that the law enforcement certification confirm limited information about the applicant including: that they have been the victim of a qualifying criminal activity investigated or prosecuted by the certifying agency; that the qualifying criminal activity violated U.S. law or occurred in the U.S. or its territories; that the applicant possesses information concerning the qualifying criminal activity; and that they have been, are being, or are likely to be helpful to an investigation or prosecution of the qualifying criminal activity.[2] The statute and regulations do not ask, for example, the certifying agency to weigh in on the victim's culpability or worthiness. Similarly, they do not contemplate that the certifying agency will attest to the injuries suffered by the victim. Certifying agencies are not well-positioned to speak to such matters outside the scope of their expertise. For example, a certifying agency usually has limited information about a victim's injuries and frequently can attest only to a victim's visible physical injuries from a particular moment in time (generally the time of the initial report). Similarly, when a law enforcement agency is invited to provide unspecified "supplemental" information about a victim, there is only a limited and mostly prejudicial universe of information they could provide– including information contained in police reports, criminal records, and court documents. This information is unnecessary, because USCIS already collects information about an applicant's arrests and criminal history in other ways including through forms I-918 and I-192 and biometrics. Further, if the law enforcement agency is hesitant to sign a form I-918 supplement B due to a victim's criminal history, they simply can decline to sign the certification, rather than signing and providing derogatory or prejudicial information as part of the certification.

[2] 8 C.F.R. § 214.14(c)(2)(i); *see also* INA § 101(a)(15)(U); INA § 214(p)(1); 8 C.F.R. § 214.14(a)(12).

Second, law enforcement agencies, particularly in rural, border, and underserved communities like those in TRLA's service area are already overburdened[3] and struggle to engage with the U visa program. Our law enforcement partners who attempt to participate in the U visa certification process report significant confusion and frustration when completing lengthy immigration forms. Adding additional pages and irrelevant questions will only increase this confusion and frustration. While two pages may not seem substantial to seasoned immigration advocates or practitioners, it does measurably increase both the perceived and actual burden of completing a U visa certification form for potential certifying agencies who are already struggling to keep up.

Third, asking certifying agencies to attest to matters outside the scope of the qualifying crime and the victim's helpfulness sends mixed signals to law enforcement about their role in the U visa program. The statute, regulations, U Visa Law Enforcement Resource Guide, forms, and form instructions make clear that USCIS has exclusive jurisdiction over U visa applications[4], that USCIS alone will review the applicant's file to determine their eligibility for U nonimmigrant status[5], and that by signing a form I-918 supplement B, the certifying agency does not grant the applicant any immigration status or guarantee that they will receive any immigration benefit.[6] Nevertheless, we routinely encounter confusion from law enforcement agencies about their role in the U visa process as well as reluctance to sign form I-918 supplement Bs out of a misinformed fear that by signing, they are granting some benefit or incurring some potential liability by "vouching" for a noncitizen. Inviting certifying agencies to opine on matters extraneous to the qualifying crime and victim's helpfulness and particularly to share unspecified and potentially prejudicial "supplemental information" only serves to exacerbate this existing confusion.

Because, as detailed above, these changes are unnecessary, burdensome, and have a potential to increase confusion and decrease law enforcement participation in the U visa program, they frustrate the twin purposes of the program which was created to encourage law enforcement to better serve noncitizen crime victims and to offer protection to noncitizen crime victims in keeping with the humanitarian interests of the U.S.

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[3] *See, e.g.*, Rafael Romo, "Texas Sheriff Says His Agency Lacks Manpower to Handle Both the Surge of Migrant Border Crossing and Local Matters," CNN (Dec. 25, 2023), https://www.cnn.com/2023/12/24/us/texas-migrant-border-crossings-surge-maverick-county/index.html; Carlos Noguera Ramos, "Rural Texas Sheriffs, Stretched Thin, Are Getting an Injection of Cash from State Lawmakers," THE TEXAS TRIBUNE (Aug. 28, 2023), https://www.texastribune.org/2023/08/28/rural-texas-sheriff-grants/; 28, 2023), https://www.texastribune.org/2023/08/28/rural-texas-sheriff-grants/.

[4] *See, e.g.*, 8 C.F.R. § 214.14(c)(1); U.S. Dep't of Homeland Security, "U Visa Law Enforcement Resource Guide," May 3, 2022, https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf [hereinafter U Visa Law Enforcement Resource Guide].

[5] *See, e.g.*, U Visa Law Enforcement Resource Guide at 10; proposed "Form I-918, Supplement B" at 2 ("USCIS is solely responsible for determining whether the crime(s) listed below is a 'qualifying criminal activity' for the purposes of eligibility for U nonimmigrant status."); proposed "Instructions for Supplement B, U Nonimmigrant Status Certification" at 1.

[6] *See, e.g.*, U Visa Law Enforcement Resource Guide at 10; proposed "Instructions for Supplement B, U Nonimmigrant Status Certification" at 1.

a. Instructions Regarding Sealing Form I-918 Supplement B

TRLA opposes the updates to the form I-918 supplement B instructions which direct certifying agencies to seal and initial the original I-918 form supplement B before providing it to the applicant. This proposed change is unnecessary, unclear, burdensome, and undermines the goals of the U visa program.

First, this additional step is unnecessary. Although USCIS has not provided any reasoning for adding this suggested new "best practice," TRLA imagines that it stems from a concern that noncitizen applicants may attempt to alter or forge form I-918 supplement Bs.[7] However, if USCIS has concerns about the validity of a particular form I-918 supplement B, there are already systems in place to permit USCIS to confirm the certifying official information and signature and to contact the certifying agency directly.

Second, the proposed instructions about this new "best practice" are unclear. While the proposed instructions for form I-918 supplement B make it sound like merely a suggestion, directing law enforcement to prepare the I-918 supplement B by placing it in a sealed envelope "if possible," the proposed instructions for forms I-918 and I-918A instead make it sound like an expectation or perhaps even a requirement. Specifically, the form I-918 and I-918A instructions state that "[t]he Form I-918 Supplement B should be properly sealed by the certifying agency." We are concerned that while many certifying agencies will interpret these instructions as optional, USCIS will ultimately treat this as a requirement and question the validity of certifications that are not submitted in a sealed and initialed envelope. We are particularly concerned about this expectation being applied retroactively. U visa applications filed on the new forms and under the proposed new instructions will likely not be adjudicated until 2045 or later.[8] That means for the next twenty-plus years, USCIS will continue to adjudicate applications filed before this "best practice" was introduced. USCIS should not question the validity of a certification simply because not filed in a sealed envelope, particularly if that was not a requirement or expectation at the time the certification was filed.

Third, although it may seem like a small additional step, as discussed above, many certifying agencies, particularly in rural and underserved areas are already overburdened and struggle to engage with unfamiliar and complicated immigration forms. Any additional expectations placed on certifying agencies or additional instructions they are supposed to follow when completing and signing form I-918 supplement B will be burdensome and will likely decrease their willingness to participate in the U visa program.

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[7] *See* proposed "Instructions for Supplement B, U Nonimmigrant Status Certification" at 3 (referencing USCIS' fraud detection unit).

[8] *See* U.S. Citizenship and Immigration Services. *Number of Form I-918, Petition for U-Nonimmigrant Status by Fiscal Year, Quarter, and Case Status (Fiscal Years 2009-2023)*. https://www.uscis.gov/sites/default/files/document/data/i918u_visastatistics_fy2023_q4.pdf

Finally, this additional step erodes trust and frustrates the purposes of the U visa program. By suggesting to law enforcement that potential U visa applicants cannot be trusted to deliver an unaltered form I-918 supplement B to USCIS after the certifying agency signs it, USCIS fosters mistrust between victims and certifying agencies as well as mistrust in the integrity of the U visa program as a whole.

If USCIS nonetheless continues to advise certifying agencies to provide the original form I-918 supplement B to applicants in a sealed envelope, we request that USCIS more explicitly mandate that certifying agencies always provide the victim with an identical copy of the signed certification. Ensuring that victims are given a copy of the signed certification before filing not only is necessary for victims, but it also will help protect USCIS's limited resources by minimizing RFEs based on errors in the form I-918 supplement B. Despite USCIS's efforts to provide increased guidance to law enforcement agencies, many agencies we work with still have limited experience with the certification process and in completing USCIS forms. It is exceedingly common to find errors, material typos, and unanswered questions on certification forms completed by certifying agencies. If would-be U visa applicants are not provided with a copy of the completed form I-918 supplement B, they will be unable to review the certification form for errors, evaluate fully their eligibility for U nonimmigrant status, or make informed decisions about whether to file their U visa application or seek corrections from the certifying agency. Given the U visa backlog, an applicant who files a U visa application without being able to review the signed form I-918 supplement B may believe they have properly filed their application and documented their eligibility for U nonimmigrant status, only to find out twenty-plus years later when their application is adjudicated that there are fundamental errors in their certification form that might lead to denial of their application or require USCIS to issue preventable RFEs, further taxing USCIS's already strained adjudicatory resources.

b. Certifying Agency Duty to Provide Certifying Official Name and Signature to USCIS

TRLA understands that USCIS seeks to implement and improve systems for confirming that a certifying official has been properly designated as such, for example, by adding an attestation to form I-918 supplement B at part 2, question 4, asking the certifying official to confirm that their name and signature has been provided to USCIS as a designated certifying official.

As an initial matter, TRLA urges USCIS not to require or expect compliance with these systems retroactively, for U visa applications filed before the systems were in place. Below, TRLA also provides suggestions to improve these systems without unduly burdening law enforcement or prejudicing U visa applicants.

First, if USCIS includes this attestation on the form I-918 supplement B, we echo other commenters who have suggested adding simple instructions about *how* to provide this information to USCIS on the form itself, not just in the form instructions or U Visa Law Enforcement Resource Guide. As written, the form itself does not make clear how certifying officials can comply if they have not already done so. Accordingly, we

recommend adding the following text directly below question 4: "To provide USCIS information about the officials at your agency who have certifying authority, email a copy of a signed letter from the head of your agency delegating certifying authority to LawEnforcementUTVAWA.VSC@USCIS.dhs.gov."

Second, we ask that USCIS recognize that a certifying agency's willingness to comply with the instructions to email USCIS when there is a change in certifiers and to provide USCIS with a copy of the certifying official's signature falls entirely outside the applicant's control. Applicants have no real way of knowing whether the certifying agency has actually done this and may rely on the mistaken belief that the agency has done so, only to receive an RFE twenty-plus years later, asking for proof that the certifying official was in fact properly designated or that his signature was valid. In addition to not applying this expectation retroactively as requested above, we ask that USCIS not penalize applicants for a law enforcement agency's failure to follow these instructions. We suggest that USCIS maintain a flexible approach, requiring evidence that a certifying official is properly designated only if there is reason to believe he may not be. Further, in such cases where evidence to call into question the designation of a certifying official, we ask that USCIS also accepting other documentation – such as a copy of a designation letter on agency letterhead submitted with the initial filing or anytime thereafter – as sufficient proof that the signer is a properly designated certifier. This flexible approach would preserve USCIS's limited adjudicatory resources and avoid further slowing U visa adjudication times and would be in keeping with the "any credible evidence" standard which applies in U visa cases.[9]

TRLA appreciates the opportunity to comment on these proposed form updates, and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

Alison Lisi
Managing Attorney
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LSC America's Partner for Equal Justice
LEGAL SERVICES CORPORATION

[9] 8 C.F.R. § 214.14(c)(4).

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May 17, 2024

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, USCIS–2010–0004; OMB Control Number 1615-0104.

Dear Chief Deshommes,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security's (DHS) Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition for U Nonimmigrant Status, published on April 17, 2024.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC is also a leader in interpreting family-based immigration law as well as VAWA, U, and T immigration relief for survivors, producing trusted legal resources including webinars, trainings, and manuals such as *Families & Immigration: A Practical Guide*; *The VAWA Manual: Immigration Relief for Abused Immigrants*; *The U Visa: Obtaining Status for Immigrant Survivors of Crime*; and *T Visas: A Critical Option for Survivors of Human Trafficking*. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by vulnerable immigrant and low-income communities – including survivors of intimate partner violence, sexual violence, human trafficking, or other forms of trauma. We welcome the opportunity to provide comments on Form I-918 Petition for U Nonimmigrant Status and related forms.

I. The ILRC requests that the agency provide extended grace periods for form changes.

The ILRC is appreciative of the many positive changes made to the U visa forms and reiterates our suggestions for improvements to the forms from our previous submission during the open comment period. However, we write to request that the agency provide extended grace periods once new versions of the U Visa forms are published to allow for the submission of previous versions of the forms for approximately one year.

Without an extended grace period, changes in the forms will create significant hardship for survivors of crime seeking U nonimmigrant status. Particularly, in the context of Form I-918 Supplement B, U Nonimmigrant Status Certifications, law enforcement agencies (LEA) often take several months or longer to process certification requests. Further, many LEAs will not certify a second Form I-918, Supplement B, due to workload constraints or other internal policies. Requiring LEAs to use a new form without a longer grace period will exacerbate these delays and create additional barriers to protection for crime survivors. Thus, without a longer grace period, requiring the new forms will create severe hardship to LEAs, as well as to crime survivors, and to the attorneys and advocates that assist them in the preparation of their U Visa applications.

USCIS has recognized the need for extended grace periods for these applicants in the past and should continue to do so as a matter of routine course if and when new versions of the U visa forms are published. Longer grace periods will ensure that vulnerable applicants are not denied access to benefits for which they are eligible due to administrative barriers outside of their control.

II. The ILRC Requests USCIS to Make Further Changes to Form I-918 and Form I-918A to Reduce Barriers to U Nonimmigrant Status

We thank the agency for the detailed feedback to our comments from the previous collection[1] and wish to reiterate some points from our previous comment.

a. USCIS should remove questions that ask applicants to draw legal conclusions.

Question 8 in Part 2 of Form I-918 and Form I-918A should be eliminated entirely, and the agency should revise the introductory language under the heading "Criminal Acts and Violations" such that applicants are not required to draw legal conclusions. By asking applicants if they have committed a crime for which they were not "arrested, cited, charged with, tried for that crime, or convicted," this question asks applicants to understand the local, state, and federal penal codes everywhere they have lived and to draw a legal conclusion that their actions rise to the level of criminality. Over-broad questions such as these run the risk that erroneous or incorrect information will be submitted necessitating Requests for Evidence (RFEs) that slow down adjudication. Given the broad nature of the question, there is also a risk that relevant information will be omitted unintentionally, which could lead to a finding of fraud during an

[1] See ILRC Comment on Form I-918, https://www.ilrc.org/resources/comment-on-proposed-changes-to-u-visa-forms#:~:text=ILRC%20commended%20the%20agency%20for,expansion%20of%20Form%20I%2D918B (submitted Jan. 8, 2024).

adjudication or even later at adjustment or naturalization. Questions like this disadvantage pro se applicants in particular, as they require legal expertise.

Though the agency conveyed in a prior response that this question is needed to assess inadmissibility grounds when adjudicating an application, broad stroke questions such as these lead to confusion for applicants and delays for adjudicators. We continue to urge the agency to reconsider the utility of this type of question and whether the results yielded justify the costs in both time, effort, and resources.

b. USCIS should amend the forms to ensure that juvenile records are not included in eligibility inquiries.

USCIS should reconsider its position and cease the consideration of juvenile records in applications for U nonimmigrant status. To that end, USCIS should make clear on Form I-918, Form I-918A, and all instructions that juvenile arrests, charges, and dispositions need not be disclosed, and juvenile records need not be provided. Across the United States, juvenile justice systems – civil systems that adjudicate violations of the law by children – recognize the significant developmental differences between children and adults and accordingly focus on early intervention, community-based resources, and rehabilitative efforts rather than punishment. In fact, most juvenile justice systems, including the federal system, have confidentiality provisions to protect young people from collateral consequences of juvenile court involvement that can occur when information and records from juvenile court proceedings are publicly available. Requiring people to disclose their youthful violations of the law to USCIS is at odds with the law and policy undergirding juvenile justice systems.

Further, immigration law does not support consideration of juvenile justice records as a matter of discretion in immigration adjudications. The seminal case on the exercise of discretion in immigration adjudications remains *Matter of Marin*. In *Matter of Marin*, the BIA lists several factors that could be deemed adverse for purposes of discretionary determinations: "the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country."[2] Juvenile delinquency adjudications do not fit anywhere within this rubric. First, juvenile justice systems are civil in nature and accordingly state laws forbid the consideration of juvenile delinquency adjudications as "crimes" or youth adjudicated delinquent as "criminals." Second, evidence of a juvenile record simply is not evidence of "bad character." Even the Supreme Court has recognized that youthful violations of the law may not be indicative of adult character and behavior.[3] In recognition of the distinctions between criminal and juvenile proceedings, the BIA held that juvenile adjudications are not treated as convictions for purposes of immigration law. This differential treatment must be extended to the exercise of discretion, especially considering that delinquency does not appropriately fit into the existing legal framework for discretionary determinations.

[2] 16 I&N Dec. 581, 584 (BIA 1978).
[3] *See Roper v. Simmons* 543 U.S. 551, 570 (2005).

To better align USCIS policy with both state laws and immigration laws, the language in the proposed Form I-918, Form I-918A, and related instructions should be amended to affirmatively exclude juvenile arrests, charges, and adjudications. Specifically, the introduction language to Part 2 "Criminal Acts and Violations" should be altered in the following way:

> *For* ***Item Numbers 7.-31. [7-29. for I-918A],*** *you must answer "Yes" to any question that applies to you, even if your records were sealed or otherwise cleared, or even if anyone, including a judge, law enforcement officer, or attorney told you that you no longer have a record. You must also answer "Yes" to the following questions whether the action or offense occurred in the United States or anywhere else in the world. However, do not include offenses that were handled in a juvenile court system.*

c. USCIS should reduce the expanded questions about unlawful presence and immigration violations.

The proposed Forms I-918 and I-918A ask more questions in general about entries and exits that could be combined. We want to start by thanking USCIS for removing the previously proposed Question #6, recombining the question regarding whether someone has been denied a visa or denied admission to the United States, and adding an "unknown" option for the type of proceedings the petitioner was in. These changes will help on streamline the petition and reduce confusion.

We also reiterate our ask that the new Question #4 in Part 2 be removed. It asks if the applicant has ever departed the United States after having been ordered excluded, deported, or removed. However, Question #3 asks whether the applicant has been issued a final order; Question #2 asks for removal proceedings with date of action; and the section begins by asking for a list of all entries and departures. Thus, Question #4 is unnecessary and redundant and these questions could be combined or simplified.

The new Question 28 asks if the petitioner has ever claimed to be a U.S. citizen in writing or any other way. The inadmissibility ground at INA § 212(a)(6)(C)(ii) requires that the false claim be made for a purpose or benefit under the INA or any other federal or state law. While this new question could help identify the false claim to U.S. citizenship ground of inadmissibility at the time of the initial U visa petition but note that the current wording is overbroad and could lead to confusion for petitioners and misreporting. The agency could revise this question to add a disclaimer that the law requires a finding of inadmissibility where the false claim was made for the purpose of obtaining a benefit. Adding this clarifying language will help pro se applicants as they navigate potential grounds of inadmissibility before filing the application. We also urge USCIS not to use incorrect information on the questions in this section, particularly from pro se applicants, to assume fraudulent intent or deny otherwise eligible petitions.

III. ILRC Requests USCIS Make Changes to Form I-198B

We thank USCIS for reducing the redundancies of the prior proposed questions regarding helpfulness and reverting back to the prior language regarding known or documented injury. We offer the following suggestions to aid USCIS in its effort to streamline Form I-918B and to make the certification process easier for both applicants and the certifying agencies.

a. Eliminate unnecessary questions on Form I-198B

As noted in the instructions, the purpose of Form I-198B is to "provide evidence that the petitioner is a victim of a qualifying criminal activity and was, is, or is likely to be helpful in the detection, investigation, prosecution of that activity, or in the conviction or sentencing of the perpetrator." To do this, it is necessary for this certification to contain questions that help certifying agency give information on the crime, who is certifying and where they work, and how the petitioner helped in reporting or investigating the crime. Not all questions added to the amended I-918B help serve this purpose and instead unnecessarily lengthen the form.

On amended Form I-918B, USCIS has provided space for the certifying agency to address the following requirements:

- Part 2, Information about the Certifying Agency and Officer
- Part 3, Case Information
- Part 4, Qualifying Criminal Activity Category
- Part 6, Helpfulness of the Victim

Within these sections, USCIS should streamline what information is collected, reduce the blank lines provided to shorten the form, and remove repetitive and unnecessary questions.

III. Conclusion

We urge USCIS to consider these suggestions and amend the proposed revisions to Forms I-918, I-918A, and I-918B. Again, we are appreciative of the many positive changes proposed and encourage USCIS to maintain those changes while also addressing the concerns we have raised here with the proposed forms. These measures will aid in the agency's goals of streamlining adjudications processes and reducing backlogs. Please don't hesitate to contact us if there are any questions at akamhi@ilrc.org.

Sincerely

/s/

Alison Kamhi
Legal Program Director
Immigrant Legal Resource Center